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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON

8 In Re:

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10 REMOTE ACCESS TO COURT
11 OPERATIONS UNDER THE EXIGENT
12 CIRCUMSTANCES CREATED BY
13 COVID-19 AND RELATED
14 CORONAVIRUS

GENERAL ORDER NO. 03-20

15 This General Order is being issued in response to the developing outbreak of Coronavirus
16 Disease 2019 (COVID-19) and in conjunction with the Court’s General Orders of March 6, 2020,
17 and March 17, 2020, ordering, among other things, the closing of the Seattle and Tacoma
18 courthouses for 30 days and ordering that “all criminal initial appearances and detention hearings
19 will be conducted via video/telephone conference with the defendant’s permission, unless
20 directed otherwise by the Court.” General Order 02-20. The Court incorporates its prior findings
21 regarding COVID-19 and the current state of emergency declarations and guidelines as set forth
22 in its prior General Orders.

23 This General Order provides the protocol regarding how the Court will conduct criminal
24 proceedings via video/telephone conferencing in a manner that protects the safety and health of
25 all those involved in the proceedings, while preserving the legal rights of the accused and
26 permitting public access.
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1 The Court recognizes that the COVID-19 crisis is an evolving one and therefore
2 establishes three levels of video/telephone conferencing with the goal of providing the highest
3 level of connectivity for each case while recognizing the need to adopt more remote access as
4 the situation develops. Constitutional due process requires that a defendant be present “to the
5 extent that a fair and just hearing would be thwarted by his absence[.]” *Kentucky v. Stincer*, 482
6 U.S. 730, 745 (1987). The Court hereby finds that during this health emergency, when in-person
7 proceedings would put the health of all participants at risk, including the defendant’s, a
8 defendant’s due process rights can best be preserved by providing the highest level of
9 connectivity that is available, while protecting the health and safety of all participants.
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11 Accordingly, the Court ORDERS, effective immediately, that necessary criminal
12 proceedings, including, but not limited to, initial appearances, detention hearings, and bond
13 revocation hearings will be conducted in the following manner, as deemed appropriate by the
14 presiding judge, or as further directed by the undersigned:
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- 16 1. Level One access is considered an In-Court hearing wherein all parties are in the same
17 courtroom. Level One access is not feasible given the guidance on COVID-19.
18 Accordingly, the Court sets forth the following three available levels of remote access.
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- 20 2. Level Two access is an In-Court hearing with only the presiding Judge and necessary
21 court staff in one courtroom and the defendant and the United States Marshals in a
22 separate courtroom, connected by video conferencing. The Assistant United States
23 Attorney (AUSA), the Federal Public Defender (FPD), Criminal Justice Act (CJA)
24 attorney, retained defense counsel, the United States Probation and Pretrial Officers,
25 Court Certified Interpreters, witnesses, victims, and the In-Court Deputy (hereinafter
26 collectively referred to as “Participants”) will be given the option to appear via
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1 videoconferencing, via telephone using the Court's conference bridge line, or appearing
2 in person in the courtroom with the defendant or with the presiding judge so long as safe
3 distancing is maintained. Instructions for videoconferencing will be provided by the
4 Court if necessary.

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6 3. Level Three access is an entirely remote proceeding wherein no person will be in the
7 Courtroom and all parties will appear remotely. At a minimum, the Judge and the
8 Defendant will appear via video conferencing. The Participants will be given the option
9 to appear via videoconferencing or via telephone using the Court's conference bridge
10 line.

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12 4. Level Four access is a telephonic proceeding wherein no person will be in the Courtroom,
13 there is no video conferencing available, and all Participants will appear by telephone
14 using the Court's conference bridge line. Exhibits and other documents will be exchanged
15 between the Court, parties and counsel via e-mail.

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17 5. For Levels Two through Four above, the Court will assist defense counsel and the
18 interpreter, when necessary, in maintaining a separate line for confidential
19 communications with the client.

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21 6. Consistent with General Order 02-20, the Seattle and Tacoma Courthouses will remain
22 closed to the public, with limited exceptions. For Levels Two through Four above, the
23 public will be permitted access to the hearing using the Court's teleconference bridge
24 line, as available. An announcement regarding the public's right of access and dialing
25 instructions will be posted on the Court's website. Members of the public and media are
26 strictly prohibited from recording or broadcasting any hearing, in whole or in part, in any
27 fashion.
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1 7. All hearings conducted pursuant this Order will be recorded by reliable means.

2 8. In an effort to limit any exposure to COVID-19 and protect the health and safety of
3 everyone involved in the proceeding, whether it is Level Two, Three, or Four, the Court
4 hereby orders that all documents and signatures required from any party including, but
5 not limited to, financial affidavits, consents to waive preliminary hearing, Pretrial and
6 Probation reports, and appearance bonds/orders for release shall be performed
7 electronically with the [s/name] format. For the defendant, the defense counsel may sign
8 on behalf of the defendant, after receiving consent, and file the document electronically.
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10 **Initial Appearances/Detention Hearings:** All parties will attempt to address the issue
11 of detention at the initial appearance, when practicable. A separate hearing will only be ordered
12 if the good cause standard set forth in 18 U.S.C. § 3142(f)(2) has been met. The factors to be
13 considered at any detention hearing remain as set forth in 18 U.S.C. § 3142(g). These factors
14 include, but are not limited to, “safety of any other person and the community” as well as “the
15 history and characteristics of the person, including . . . the person’s physical and mental
16 condition.” The presiding judge will give specific consideration of these factors in light of the
17 existing health emergency. Pretrial and Probation reports will be circulated to the parties via
18 email and will be kept confidential, as per the usual and customary procedures.
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21 **Preliminary Hearings:** Unless waived by the defendant pursuant to Rule 5.1(a)(1) all
22 preliminary hearings are continued pursuant to General Order 02-20. The Court will set status
23 conferences 30-days out at each initial appearance to determine if a preliminary hearing can be
24 set. When requested, the presiding judge may set any preliminary hearing in accordance with
25 above emergency procedures.
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1 **Motions to Reopen Detention Hearings:** The Court will attempt to address motions to
2 reopen detention hearings on an expedited basis for reasons associated with the ongoing health
3 emergency. Accordingly, the Court ORDERS as follows:

- 4 1. The FPD, CJA counsel, or retained counsel should identify individuals who are currently
5 detained but should be reconsidered in light of the ongoing health emergency and who do
6 not pose a current and substantial safety risk to the community or flight risk.
- 7 2. The FPD, CJA counsel, or retained counsel will notify the AUSA and the Probation and
8 Pretrial Services officer assigned to the matter of the designation and schedule a meet and
9 confer conference via telephone to determine if the parties can agree on a stipulation for
10 release.
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- 12 3. If the parties can agree to recommend release, they shall file an emergency joint motion
13 with the Court, with a copy to Probation and Pretrial Services, setting forth the stipulation
14 and any agreement on bond conditions. The joint motion shall be noted for the day it is
15 filed. When practicable, the Court will consult with Probation and Pretrial Services as to
16 whether to release the defendant and any conditions of release if granted and will either
17 rule on the motion without a hearing or set a hearing as soon as practicable.
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- 19 4. If the parties are unable to reach agreement on release, then the FPD, CJA counsel, or
20 retained counsel will file an emergency motion with the Court, provide a copy the
21 Probation and Pretrial Services officer, and note the motion for the following day. The
22 AUSA will file any opposition to the motion by the following day or advise the Court of
23 the reason why additional time is required for a response. Probation and Pretrial Services
24 will attempt to provide the Court with a supplemental report outlining its
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1 recommendations for conditions if release granted, and if the Court deems necessary, the
2 Court will set a hearing as soon as practicable using the procedures outlined in this Order.

3 The Court will continue, vacate, or amend this General Order no later than April 15, 2020.

4 Dated this 25th day of March, 2020.

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7 RICARDO S. MARTINEZ
8 CHIEF UNITED STATES DISTRICT JUDGE
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