

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

**ORDER CLARIFYING SPEEDY TRIAL  
ACT FINDINGS IN RESPONSE TO  
EXIGENT CIRCUMSTANCES CREATED  
BY COVID-19**

**ADM-1  
ORDER 20–26**

ORDER

Since the beginning of the COVID-19 pandemic, the court has been monitoring the impact of the virus nationally and in New Hampshire. Based on statistical data and evolving medical studies and information, the court has evaluated whether it can safely convene criminal jury trials. In conducting this analysis, the court has balanced public health and safety concerns against the defendant’s liberty interests and constitutional right to a speedy jury trial. The court has conducted this analysis each month since March 2020. As communicated in a series of monthly standing orders, the court determined it was necessary to continue criminal jury trials from March 12, 2020 to August 1, 2020.

In recent weeks, however, New Hampshire has seen a decline in its COVID-19 infection, hospitalization and death rates. Additionally, there is emerging data on the efficacy of various mitigation initiatives, such as mask wearing, social distancing, health screening, plexiglass, and increasing air ventilation rates and upgrading air filters. While the improving COVID-19 statistical data and mitigation techniques do not allow the court to safely return to normal operations at this time, the court believes conditions have sufficiently improved to permit it to conduct a small number of criminal jury trials in an effort to accommodate the important constitutional right to a speedy jury trial. Thus, the court will select one criminal jury trial per selection period, but for safety reasons will assure that no jury trials proceed simultaneously.

In consultation with counsel, the court has identified only two cases from the August trial list that are potentially prepared to proceed to trial:

United States v. Daniel Musso, 16-cr-33-JL  
United States v. Christopher Cantwell, 20-cr-6-PB

All other criminal jury trials scheduled for August before the undersigned judges are continued.

Each of the undersigned judges adopt the excludable time and “ends of justice” findings contained in the Speedy Trial Act order in ADM-1, Order 20-25, and apply those findings to all criminal cases continued by that order.

The undersigned judges continue to agree—in light of the unique circumstances presented by this public health emergency as described in ADM 1, 20-25—that issuing individual findings in each separate case would be redundant and unnecessary and a waste of


scarce judicial resources. The Speedy Trial Act “ends of justice” findings in each case are—due to the nature of this public health emergency—applicable generally to all cases before this court. Thus, a particularized finding in each case would be redundant.

The undersigned judges reiterate that “[e]xcept for the right of a fair trial before an impartial jury, no mandate of our jurisprudence is more important” than the Speedy Trial Act. Furlow v. United States, 644 F.2d 764, 768–69 (9th Cir. 1981) (analyzing Speedy Trial Act and upholding district court’s “ends of justice” findings during the emergency created by the eruption of Mt. St. Helens). In exercising our discretion to make these findings under the Speedy Trial Act, the undersigned remain ever mindful of the critical principles at stake here.

Within seven (7) days of the date this order is docketed, any defendant who has an individualized concern not addressed by this order may file a motion for a determination regarding his or her rights under the Speedy Trial Act, and the court will consider the ends of justice finding as to that defendant de novo.


SO ORDERED.

Date: July 24, 2020



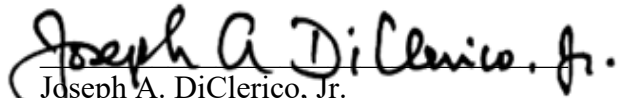
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Landya B. McCafferty  
Chief Judge




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Joseph N. Laplante  
District Judge



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Joseph A. DiClerico, Jr.  
District Judge



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Steven J. McAuliffe  
District Judge