

Dear Adam,

Your email from earlier today to our Clerk of Court, John Morrill, was referred to me for a response.

Since the beginning of the COVID 19 epidemic, our Court has taken every recommended precaution to protect the health and safety of visitors to our courthouses, of counsel and their clients, and of Court staff. These precautions include requiring the wearing of face coverings, maintaining recommended distancing, limiting the number of people who are permitted in elevators and in the courtrooms at the same time, providing additional PPE (including face shields and gloves) when requested, maintaining a rigorous daily cleaning schedule of all courtrooms and public areas (including restrooms), screening all visitors at the entrances to court facilities and not permitting entry by anyone who may have been exposed to the virus, requiring counsel and their clients to remain seated at counsel table during all proceedings, etc. Criminal defendants who are being held in custody are temperature checked twice by the U.S. Marshals before being brought to court. Any defendant with an elevated temperature or who shows any sign of infection is not permitted to enter the courthouses. Further, all in custody defendants who appear in court are quarantined for 14 days following their court appearance. Over a month ago, our Court also retained the services of two medical professionals who inspected all of our court facilities and courtrooms over a three hour period and made additional recommendations, all of which have been followed. After reviewing our facilities and learning of the precautions that we are taking, the medical professionals advised us that there is very little risk of visitors to the courthouses contracting COVID 19.

I refer you also to our Court website (<https://www.casd.uscourts.gov/>). It contains a comprehensive list of other measures that we are taking and have taken to help ensure that the federal courthouses are safe places to visit. If you review the information on the site, you will find a standard form Order that any attorney can submit to request an exemption from appearing personally, and to instead appear by video conference or telephone. Very few attorneys have submitted requests; all submitted requests have been granted. You may also be unaware that in federal grand juries resumed convening in May. I am informed that as many as four different grand juries are currently hearing cases on a weekly basis.

After conducting all proceedings by video conference for several months, I determined – consistent with Governor Newsom's easing of restrictions throughout California – that beginning on July 20, in person guilty plea and sentencing proceedings for defendants who were both in custody and who had been released on bond could safely resume. In all other criminal and civil proceedings besides guilty pleas and sentencing, video conferencing continues to be authorized. The temporary authority to conduct proceedings by video conferencing that we have operated under is authorized by the CARES Act. The Act requires a heightened standard be met before guilty plea and sentencing proceedings may occur by video conference — a standard that as Chief Judge I determined could no longer be met given the intensive safety precautions being observed in our San Diego courthouses (pleas and sentencing via video conferencing continue to be authorized in our El Centro courthouse because of the recent spike in COVID 19 infections in Imperial County). Since July 20, our judges have conducted guilty plea and sentencing proceedings without incident, except for the single situation you reference in front of Judge Anello. Guilty pleas are being taken in Courtroom 2A in the Schwartz courthouse, where defendants are shielded behind a plexiglass barrier during the proceedings. Sentencing proceedings occur in courtroom of the assigned judge. During these proceedings, in custody defendants are seated near the door leading from the courtroom to the court holding cell, separated from everyone else (except the U.S. Marshals who bring them back and forth from the courtrooms) by at least 15 feet.

As to the single incident of a reported infected person appearing before Judge Anello, I am informed that the inmate was checked by the U.S. Marshals before being brought into court, did not have an elevated temperature, and did not otherwise exhibit any symptoms of infection. As described above, he was maintained seated by himself at a distance of at least 15 feet from other people in the court except for the Marshals guarding him. After the inmate was sentenced, we were informed that he had tested positive for the virus. Upon learning that information, our Court followed the recommended CDC guidelines for notifying all those who were present in the courtroom. It has now been several days since the incident and I am informed that no other person who was present and who was notified of the risk has experienced infection symptoms or has tested positive for COVID 19.

Regarding Ms. Nester's letter to Senator Harris, I refer to the attached response to the letter from U.S. Attorney Robert Brewer. Mr. Brewer maintains that Ms. Nester's letter is inaccurate in numerous significant respects, and that Ms. Nester is or should be aware of the inaccuracies. Insofar as her representations regarding the operation of the Court is concerned, I believe I have adequately responded to them in this email.

In sum, Adam, our Court is committed to fulfilling its duty to provide access to justice and due process of law by keeping the doors to our courthouses open. At the same time, we are acutely aware of the need to be sensitive, flexible, and wise in balancing the imperative to protect the health and safety of all who enter through our doors.

I hope this response answers your questions.

Very sincerely and respectfully,

Larry A. Burns
Chief U.S. District Judge