

Criminal Statutes of Limitations and Speedy Trial Act Considerations During the COVID-19 Pandemic

COVID-19 全球疫情期间的刑事诉讼时效及《迅速审判法》考虑

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COVID-19 (hereinafter, “the coronavirus”) is causing significant interruptions to the legal system across the United States, with implications for actual and potential subjects in government investigations and defendants in enforcement actions. This client advisory analyzes the pandemic’s potential effects on the default statute of limitations for federal crimes and deadlines under the Speedy Trial Act.

COVID-19（下称“新冠肺炎”）正造成美国全国法律体系的大面积中断，也给政府调查中的实际和潜在主体以及执法行动中的被告人带来影响。本客户报告分析了此次疫情对默认的联邦犯罪诉讼时效以及《迅速审判法》下期限的潜在影响。

Overview

概要

Federal courts have not addressed whether states of emergency or disruptive events such as natural disasters and epidemics can toll the statute of limitations for federal crimes. To that end, the Department of Justice has reportedly sent Congress proposed legislation that would toll the statute of limitations for federal prosecutions during, and for one year following, national emergencies. In response to the coronavirus outbreak, at least two district courts have issued orders explicitly tolling all statutes of limitations.

联邦法院尚未研究自然灾害和流行病等紧急状态或破坏性事件是否可以中止联邦刑事诉讼时效。据报道，美国司法部已向国会提交建议立法，即在国家紧急状态期间及之后一年内中止联邦诉讼的时效。为应对新冠肺炎的爆发，至少有两家联邦地区法院发布了明确中止诉讼时效的命令。

Delays resulting from a pandemic would likely be excluded from the deadlines established by the Speedy Trial Act. Courts have attempted to adapt to the coronavirus pandemic by holding telephonic proceedings to the extent possible. But trials raise unique public safety concerns that will be challenging for courts to address. To that end, many courts across the country have issued “ends-of-justice” orders of general applicability, which have continued all criminal trials and excluded delays resulting from the disruption caused by COVID-19.

因流行病导致的延迟很可能被排除在《迅速审判法》规定的期限之外。法院已试图通过在可能的情况下进行电话审理来应对新冠肺炎疫情。但审判会引起法院难以处理的独特的公共安全顾虑。为此，美国各地许多法院发布了具有普遍适用性的“公正合理的目的”命令，这些命令使所有刑事审判得以继续，并排除了因 COVID-19 引起的中断而造成的延迟。

Statute of Limitations 诉讼时效

A statute of limitations “limit[s] exposure to criminal prosecution to a certain fixed period of time following the occurrence of” alleged criminal acts.¹ Most federal crimes are subject to a five-year statute of limitations set out in the federal catch-all statute.² A number of exceptions identify longer time periods, or no limitations, for certain crimes.³ We expect the pandemic will thrust statute of limitations issues to the forefront of investigations and enforcement actions.⁴ While courts may theoretically be able to toll statutes of limitations equitably⁵, none has yet done so in favor of the government in a criminal context, and prosecutors likely will be wary of relying on the interim orders that courts have issued in the aftermath of the outbreak. Looking ahead, Congress’ action or inaction in the coming weeks will likely determine the outcome of the tolling question.

诉讼时效“将刑事诉讼的适用范围限制为”被指犯罪行为“发生后的某一固定期间”。⁶ 多数联邦犯罪适用联邦总体法规中规定的五年诉讼时效。⁷ 若干例外情况对某些犯罪确定了较长的期限或不设限制。⁸ 我们预计，全球疫情会使诉讼时效问题成为调查和执法行动的重中之重。⁹ 虽然法院可能理论上能够公平地中止诉讼时效，¹⁰ 但就刑事犯罪而言，还没有法院做出对政府有利的此类决定，检察官很可能会谨慎地依赖法院在疫情爆发后发布的临时命令。展望未来，国会未来数周的作为或不作为很可能会决定时效中止问题的结果。

¹ *Toussie v. United States*, 397 U.S. 112, 114 (1970).

² 18 U.S.C. § 3282(a) (“[N]o person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or information is instituted within five years next after such offense shall have been committed.”).

³ See, e.g., *id.* § 3286 (terrorism offenses); *id.* § 3298 (trafficking-related offenses); *id.* § 3301 (securities fraud offenses).

⁴ New York State, pursuant to an executive order, also tolled all state statutes of limitations from March 20, 2020 until April 19, 2020. [N.Y. Exec. Order No. 202.8](#) (Mar. 20, 2020).

⁵ See, e.g., *United States v. Atiyeh*, 402 F.3d 354, 367 (3d Cir. 2005) (“[W]e have never foreclosed the possibility that equitable tolling applies to criminal statutes of limitations.”); *United States v. Midgley*, 142 F.3d 174, 175–78 (3d Cir. 1998) (“Although the doctrine of equitable tolling is most typically applied to limitation periods on civil actions, there is no reason to distinguish between the rights protected by criminal and civil statutes of limitations.” (citations and internal quotation marks omitted)).

⁶ *Toussie* 诉美国案，397 U.S. 112, 114 (1970)。

⁷ 《美国法典》第 18 卷第 3282(a) 条：“任何人都不得因任何罪行（死罪除外）被起诉、审判或惩罚，除非在该罪行发生后的五年内找到起诉书或记录相关信息。”

⁸ 参见，如，（同上）第 3286 条（恐怖主义罪行）；（同上）第 3298 条（非法买卖相关罪行）；（同上）第 3301 条（证券欺诈罪行）。

⁹ 纽约州也于 2020 年 3 月 20 日根据一项行政命令中止了所有州诉讼时效，命令有效期至 2020 年 4 月 19 日。[纽约州第 202.8 号行政命令](#)（2020 年 3 月 20 日）。

¹⁰ 参见，如，*美国诉 Atiyeh* 案，402 F.3d 354, 367 (3d Cir. 2005) (“我们从未排除公平中止适用于刑事诉讼时效的可能性。”)；*美国诉 Midgley* 案，142 F.3d 174, 175–78 (3d Cir. 1998) (“尽管公平中止原则最常见适用于民事诉讼的期限，但没有理由区分刑事和民事诉讼时效所保护的权利。”（引用文和内引号略））。

Proposed Legislation 立法建议

Amid the outbreak, the Department of Justice has reportedly sent Congress proposed legislation regarding the statute of limitations.¹¹ According to Politico, the Department “asked Congress to pause the statute of limitations for criminal investigations . . . during national emergencies, ‘and for one year following the end of the national emergency.’”¹² A Department spokeswoman later clarified that it had proposed several options for tolling the statute of limitations, including upon an order by the chief judge of the relevant federal district court or by the Chief Justice of the United States, and that it would expire upon termination of the national emergency or by a finding from the Chief Justice that it no longer affected the functions of the federal courts, whichever came sooner.¹³ To date, the Department has not issued any public guidance on how it will approach enforcement pending any change to the federal statute of limitations.

在疫情爆发期间，据报道司法部向国会提交了关于诉讼时效的建议立法。¹⁴ 根据媒体 Politico 报道，司法部“请求国会……在国家紧急状态期间以及‘在国家紧急状态结束后一年内’中止刑事调查的诉讼时效。”¹⁵ 司法部一位女发言人后来澄清说，该机构提出了中止诉讼时效的几个选项，包括相关联邦地区法院首席法官或美国首席大法官发出命令，且该命令将在国家紧急状态结束或首席大法官作出该紧急状态不再影响联邦法院职能的判定时（无论哪一种情况先出现）失效。¹⁶ 截至目前，司法部尚未就联邦诉讼时效出现变更之前其将如何处理执法事宜发布任何公开指引。

¹¹ DOJ Seeks New Emergency Powers amid Coronavirus Pandemic, [POLITICO](#) (Mar. 21, 2020).

¹² *Id.* While the status of the proposed legislation is unclear, law makers in both parties have announced their opposition. See DOJ Asks Congress for Broad New Powers Amid COVID-19. Schumer Says, “Hell No,” [VOX](#) (Mar. 22, 2020).

¹³ Kerri Kupec (@KerriKupecDOJ), [Twitter](#) (Mar. 23, 2020, 12:01 a.m.). Some of proposed options for tolling the statute of limitations may raise constitutional concerns. For example, the “judicial Power” granted by Article III may not empower the Chief Justice to make factual determinations outside of a pending “case or controversy,” and it is debatable whether Congress may delegate its legislative authority to the courts in this manner.

¹⁴ 《司法部在新冠肺炎疫情中寻求新的紧急权力》，[Politico](#)（2020年3月21日）。

¹⁵（同上）虽然建议立法的进展尚不明确，但两党的立法人士均表示反对。参见《司法部在 COVID-19 疫情期间向国会请求广泛的新权力》。Schumer 说，“决不。”[Vox](#)（2020年3月22日）。

¹⁶ Kerri Kupec (@KerriKupecDOJ), [推文](#)（2020年3月23日，上午 12:01）。一些中止诉讼时效的建议选项可能会引起违宪担心。例如，第三条授予的“司法权力”不会授予首席大法官在未决“案件或争议”之外做出事实认定的权力，国会是否可以此方式向法院下放其立法权限也是有争议的。

District Court Orders 联邦地区法院命令

In the last month, courts around the country have issued orders in response to the outbreak.¹⁷ Most courts either did not address the statute of limitations or explicitly stated that the orders did not affect them.¹⁸ Two courts in Texas, however, purported to toll all applicable statutes of limitations. The Northern District of Texas issued an order stating that “[a]ll deadlines are . . . tolled for all purposes, including the statute of limitations,” through May 1, 2020,¹⁹ and the Eastern District of Texas issued a similarly worded order.²⁰ Both orders, which did not cite any supporting legal authority or invoke the courts’ equitable tolling powers, arguably exceed the courts’ authority to issue rules governing proceedings in their courts.²¹

在上个月，美国各地的法院均针对疫情爆发发布了命令。²² 多数法院要么未提及诉讼时效，要么明确称，这些命令不会影响诉讼时效。²³ 但是，德克萨斯州的两家法院声称中止了所有适用的诉讼时效。德克萨斯州北区联邦地区法院发布一项命令称，“所有目的的……所有期限（包括诉讼时效）均予中止，”期限至 2020 年 5 月 1 日，²⁴ 德克萨斯州东区联邦地区法院也发布了类似措辞的命令。²⁵ 这两项命令均未引述确证的法律权限或援引法院的公平中止权力，可以说超出了这些法院就其审理的程序发布规则的权限。²⁶

¹⁷ *The Federal Courts Begin to Adapt to COVID-19*, [LAWFARE](#) (updated Mar. 18, 2020).

¹⁸ E.g., [Standing Order No. 20-9](#), *In re: Court Operations in Exigent Circumstances Created by the COVID-19 Pandemic* (D.D.C. Mar. 16, 2020); [Order of the Chief Judge No. 18](#), *In the Matter of Suspension of Jury Trials and Other Proceedings During the COVID-19 Public Emergency* (S.D. Cal. Mar. 17, 2020).

¹⁹ [Special Order No 13-5](#), *Court Operations under the Exigent Circumstances Created by the COVID-19 Pandemic* (N.D. Tex. Mar. 13, 2020).

²⁰ [General Order 20-03](#), *Court Operations under Exigent Circumstances Created by the COVID-19 Pandemic* (E.D. Tex. Mar. 16, 2020).

²¹ Congress has granted district courts rulemaking power to “prescribe rules for the conduct of their business,” but for no other purpose. 28 U.S.C. § 2071(a), (f). Congress has clearly stated that these rules “shall not abridge, enlarge or modify any substantive right.” *Id.* § 2072(b). The district court orders tolling statutes of limitations arguably exceed the district court’s rulemaking authority by abridging and modifying a defendant’s rights. Cf. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 407 (2010) (Under § 2072, a court may issue rules to “govern only the manner and the means by which the litigants’ rights are enforced”; they cannot “alter the rules of decision by which the court will adjudicate those rights” (cleaned up)); *Bonham v. Weinraub*, 413 F. App’x 615, 616 (4th Cir. 2011) (“state statutes of limitations are considered substantive law” (citing *Guaranty Trust Co. v. York*, 326 U.S. 99, 110 (1945))).

²² 《联邦法院开始就 COVID-19 采取应对措施》，[Lawfare](#)（更新于 2020 年 3 月 18 日）。

²³ 如，[第 20-9 号现行命令](#)，“关于在 COVID-19 全球疫情造成的紧急情形下的法院运行”（D.D.C. 2020 年 3 月 16 日）；[第 18 号首席法官令](#)，“关于在 COVID-19 公共紧急状态下暂停陪审团审判和其他程序的事宜”（S.D. Cal. 2020 年 3 月 17 日）。

²⁴ [第 13-5 号特别命令](#)，“在 COVID-19 全球疫情造成的紧急情形下的法院运行”（N.D. Tex. 2020 年 3 月 13 日）。

²⁵ [第 20-03 号一般命令](#)，“在 COVID-19 全球疫情造成的紧急情形下的法院运行”（E.D. Tex. 2020 年 3 月 16 日）。

²⁶ 国会授予联邦地区法院规则制定权，以“就其程序的运行制定规则，”但不得用于其他用途，《美国法典》第 28 卷第 2071(a),(f)条。国会明确称，这些规则“不得减少、扩大或修改任何基本权利。”（同上）第 2072(b)条。中止诉讼时效的联邦地区法院命令可以说超越了联邦地区法院的规则制定权限，因为这些命令减少和修改了被告人的权利。参见 *Shady Grove Orthopedic Assocs., P.A. 诉 Allstate Ins. Co.*案，559 U.S. 393, 407 (2010)（根据第 2072 条，法院可发布“仅适用于执行诉讼当事人权利的方式和手段”的规则；但其不得“变更法院裁定这些权利所依据的裁决的规则”（已清理））；*Bonham 诉 Weinraub*案，413 F. App’x 615, 616 (4th Cir. 2011)（“州诉讼时效被视为实体法”（引述 *Guaranty Trust Co. v. York*案，326 U.S. 99, 110 (1945)））。

Statutory Tolling 法定中止

Generally, the federal tolling statutes would likely not apply in the event of national emergencies or other disruptive events. These provisions are narrowly tailored and apply only to certain categories of cases, such as child abuse (18 U.S.C. § 3283), concealment of assets in bankruptcy (18 U.S.C. § 3284), wartime fraud against the government (18 U.S.C. § 3287), and obtaining foreign evidence (18 U.S.C. § 3292). For investigations with international dimensions, the pandemic could lead to tolling under the foreign evidence provision, which allows tolling for up to three years while the government makes an official request to obtain evidence located in a foreign country.²⁷ As governments take steps to limit the operations of nonessential business to mitigate the spread of the coronavirus, the Department of Justice may face delays in gathering evidence overseas, making the provision particularly salient for global investigations involving foreign witnesses and evidence.

一般而言，联邦中止法规在国家紧急状态或其他破坏性事件的情况下不大可能会适用。这些规定有严格的范围，仅适用于某些类型的案件，如虐待儿童案（《美国法典》第 18 卷第 3283 条）、破产财产的隐藏（《美国法典》第 18 卷第 3284 条）、战时欺诈政府（《美国法典》第 18 卷第 3287 条）以及取得外国证据（《美国法典》第 18 卷第 3292 条）。对于国际范围的调查，大流行病可能导致外国证据规定下的中止，该规定允许在政府发出获取位于外国的证据的正式请求时中止达三年。²⁸ 由于政府采取措施限制非必要企业运营以减少新冠肺炎传播，司法部可能在搜集海外证据时面临延迟，这使该规定在涉及外国证人和证据的全球调查中尤其重要。

The Speedy Trial Act **迅速审判法**

In addition to statutes of limitations, prosecutors must also consider the Speedy Trial Act,²⁹ which governs the timing of a federal criminal prosecution. Under the Act, the government must indict a defendant within 30 days of arrest or service of summons; a trial must begin within 70 days of the indictment or the defendant's first appearance in court, whichever is later.³⁰ The Act contains some provisions automatically excluding time from these deadlines under certain circumstances.³¹ More broadly, it permits a judge to exclude time under the Speedy Trial Act by granting a continuance, so long as "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial."³²

²⁷ 18 U.S.C. § 3292(a)(1), (c).

²⁸ 《美国法典》第 18 卷第 3292(a)(1)、(c)条。

²⁹ *Id.* § 3161 *et seq.*

³⁰ *Id.* § 3161(b)-(c).

³¹ *See generally id.* § 3161(h)(1)-(6).

³² *Id.* § 3161(h)(7)(A).

除诉讼时效外，检察官还须考虑《迅速审判法》，³³ 该法适用于联邦刑事诉讼的时间安排。根据该法，政府必须于逮捕或送达传票后 30 天内起诉被告人；起诉或被告人首次出庭（以两者中较迟者为准）起 70 天内必须开始审判。³⁴ 该法包含一些在特定情形下自动从这些期限中排除时间的规定。³⁵ 从更广的意义上说，该法允许法官根据《迅速审判法》通过准予延期审理排除时间，前提是“通过采取此类行动所实现的公正合理的目的比迅速审判中的公众及被告人的最大利益更为重要。”³⁶

While the scale of disruption caused by the coronavirus is novel, precedents suggest that its resulting delays could be excluded under the Speedy Trial Act. Courts have routinely continued trials when states of emergency have closed courthouse facilities, or when disease has rendered individuals unavailable to appear at trial. On a broader scale, the virus has disrupted government operations, either because of diverted resources, sick or quarantined personnel, or a backlog of continued matters. The Act does not explicitly exclude time associated with such delays, but parties are likely to request, and courts are likely to grant, exclusions on these grounds.

虽然新冠肺炎导致的破坏规模前所未有，但历史上的类似事件表明，其导致的延迟可根据《迅速审判法》被排除。在紧急状态关闭法院设施或当疾病使个人无法出庭的情况下，法院一如既往地继续审判。从更广泛的角度讲，由于资源转移、人员生病或被隔离或继续进行的事务的积压，病毒扰乱了政府的运行。该法未明确排除与此类延迟有关的时间，但基于这些理由，当事方可能会请求且法院也可能会批准排除。

Unavailability of the Courthouse 法院无法运作

Courts have excluded time under the Speedy Trial Act when exigent events interrupt the operations of the courthouse.³⁷ While these precedents tend to relate to natural disasters like volcanic eruptions and hurricanes, courts have also recognized that an infectious disease is “an extraordinary event” sufficient to justify delaying trial proceedings.³⁸ In the case of the coronavirus, the risk of transmission threatens the safety of parties, judges, and staff, which may disrupt courthouse proceedings.³⁹ And several courts have noted the risk of convening grand juries.⁴⁰ To that end, many federal courts have already begun closing their doors and granting blanket ends-of-justice continuances under the Act.⁴¹

³³ (同上) 第 3161 条及以下。

³⁴ (同上) 第 3161(b)-(c) 条。

³⁵ 更多参见 (同上) 第 3161(h)(1)-(6) 条。

³⁶ (同上) 第 3161(h)(7)(A) 条。

³⁷ See, e.g., *Furlow v. United States*, 644 F.2d 764, 768 (9th Cir. 1981). There, a district court issued a 13-day continuance following the eruption of Mt. St. Helens, which had a “paralyzing impact on . . . the location of the court.” *Id.* at 767.

³⁸ See *United States v. Phinizy*, 2019 WL 2570038, at *4 (D.D.C. June 21, 2019). A court’s closure during a natural disaster can render it “inaccessible” under Federal Rule of Criminal Procedure 45(a)(3), which may also automatically exclude the corresponding delays under the Speedy Trial Act. See *United States v. Sanchez-Senda*, 2018 WL 1737615, at *1 (D.P.R. Apr. 9, 2018) (excluding time from the Act’s deadlines because courthouse was inaccessible during Hurricane Maria).

³⁹ See *United States v. Clark*, 2007 WL 2446128, at *2 (W.D. La. June 15, 2007) (defendant suffered a rare infection rendering him contagious to anyone he touched).

⁴⁰ See [Standing Order No. 20-9](#), *In re: Court Operations in Exigent Circumstances Created by the COVID-19 Pandemic*, at 3 (D.D.C. Mar. 16, 2020).

⁴¹ See [The Federal Courts Begin to Adapt to COVID-19](#), [LAWFARE](#) (updated Mar. 18, 2020), *supra* n.9.

在紧急事件中中断法院运行时，法院曾根据《迅速审判法》排除时间。⁴² 虽然这些先例往往与火山爆发和飓风等自然灾害有关，但法院也认可传染病是足以符合延迟审判程序条件的“异常事件”。⁴³ 在新冠肺炎疫情中，疾病传播的风险对当事方、法官和工作人员的安全构成威胁，这会扰乱法院的程序。⁴⁴ 有几家法院指出了召集大陪审团的风险。⁴⁵ 为此，许多联邦法院已经开始着手关门，并根据该法准予适用于所有情况的出于公平合理的目的的延期。⁴⁶

Unavailability of the Defendant or Witnesses 被告人或证人无法出席

The Act excludes any period of delay resulting from “unavailability of the defendant or an essential witness,” including when their “presence for trial cannot be obtained by due diligence.”⁴⁷ It also specifically excludes time when the defendant is “physically unable to stand trial.”⁴⁸ Under some circumstances, the quarantine of a defendant or witness may mean that her testimony “cannot be obtained by due diligence” within the meaning of the Act.⁴⁹ Outside of the statutory provisions for “availability,” a disease quarantine may also justify an ends-of-justice continuance.⁵⁰ Where a defendant or key witness has contracted the coronavirus, then, a court could determine that she is “unavailable” for trial or grant an ends-of-justice continuance in the interest of preventing transmission.⁵¹

⁴² 参见，如 *Furlow 诉美国案*，644 F.2d 764, 768 (9th Cir. 1981)。在该案中，联邦地区法院在圣海伦火山爆发后宣布 13 天的延期，因为该火山的爆发“对法院所在地……造成破坏性的影响”。同上第 767 页。

⁴³ 参见，*美国诉 Phinizy 案*，2019 WL 2570038，第 4 页（D.D.C. 2019 年 6 月 21 日）。根据《联邦刑事诉讼规则》第 45(a)(3) 条，在自然灾害期间法院关门可使其“无法使用”，该情况下依据《迅速审判法》可能会自动排除相应的延迟。参见，*美国诉 Sanchez-Senda 案*，2018 WL 1737615，第 1 页（D.P.R. 2018 年 4 月 9 日）（由于法院在飓风玛利亚期间无法使用而从该法期限中排除时间）。

⁴⁴ 参见，*美国诉 Clark 案*，2007 WL 2446128，第 2 页（W.D. La.，2007 年 6 月 15 日）（被告人遭受罕见感染，使其对于其接触的任何人具有传染性）。

⁴⁵ 参见第 20-9 号现行命令，“关于在 COVID-19 全球疫情造成的紧急情形下的法院运行”，第 3 页（D.D.C. 2020 年 3 月 16 日）。

⁴⁶ 参见，《联邦法院开始就 COVID-19 采取应对采取应对措施》，[Lawfare](#)（更新于 2020 年 3 月 18 日），同上第 9 页。

⁴⁷ 18 U.S.C. § 3161(h)(3).

⁴⁸ *Id.* § 3161(h)(4).

⁴⁹ *United States v. Bell*, 925 F.3d 362, 375 (7th Cir. 2019) (finding that a district court had properly deemed a key witness not “available” under the Speedy Trial Act during his time in disease quarantine).

⁵⁰ In *United States v. Allen*, a court continued the defendant’s trial after he became exposed to chicken pox—both because of his own unavailability but also due to “the obvious benefit to the public of containing a harmful contagion.” 2012 WL 3763910, at *4 (D.V.I. Aug. 30, 2012).

⁵¹ Federal prisons have begun to report cases among inmates. *New Coronavirus Cases in U.S. Jails Heighten Concerns about an Unprepared System*, [CNN](#) (updated Mar. 20, 2020). In response, some have begun blocking attorney visitation, potentially creating more excludable delays. See 18 U.S.C. § 3161(h)(7)(B)(iv).

《迅速审判法》排除因“被告人或重要证人无法出庭”导致的任何延期，包括“通过采取适当措施仍无法使其出庭”的情况。⁵² 该法还明确排除被告人“无法亲自受审”的时间。⁵³ 在某些情形下，被告人或证人的隔离可能意味着如该法规定的“无法通过采取适当措施获得”其证言。⁵⁴ 在关于“无法出席”的法规范畴之外，疾病隔离亦可满足出于公平合理目的的延期的条件。⁵⁵ 如果一名被告人或重要证人罹患新冠肺炎，则法院可认定其“无法出席”审判，或基于防止疾病传播的理由准予出于公平合理的目的的延期。⁵⁶

Unavailability of Government Personnel

政府人员无法出席

When a judge is asked to grant an ends-of-justice continuance, the Act requires her to consider whether failure to do so would deny the government reasonable time to prepare for trial.⁵⁷ Courts have rarely, if ever, excluded delays associated with government trial preparation in this context.⁵⁸ Nonetheless, the coronavirus is likely to place significant burdens on government counsel, who will face delays from quarantines or shelter-in-place orders, not to mention the logjam of matters that will develop as courts grant further continuances. Public restrictions on nonessential travel may also limit federal agents' ability to conduct their work in advance of indictment or trial. There is relatively little precedent for this, but the government might plausibly request ends-of-justice continuances for “the reasonable time necessary for effective preparation.”⁵⁹ Many courts, whose dockets will be similarly burdened, may be inclined to grant them.⁶⁰

当法官收到出于公平合理的目的的延期请求时，该法要求法官考虑不这么做是否会导致政府没有合理时间来准备审判。⁶¹ 在这种情况下，法院很少（如果有过的话）排除与政府审判准备相关的延迟。⁶² 尽管如此，新冠肺炎很可能会给检察官造成很大负担，其将面临隔离或居家命令造成的延迟，更不用说由于法院准予延期造成的事务积压僵局。关于非必要旅行的公众限制也可能影响联邦探员在起诉或审判之前从事工作的能力。在这方面鲜有先例，但政府可貌似合理地请求出于公平合理目的的延期，以获得有效准备所需的合理时间。⁶³ 许多案件同样堆积如山的法院可能愿意批准此类请求。⁶⁴

⁵² 《美国法典》第 18 卷第 3161(h)(3)条。

⁵³ 同上，第 3161(h)(4)条。

⁵⁴ 美国诉 *Bell* 案，925 F.3d 362, 375 (7th Cir. 2019)（裁定一家联邦地区法院根据《迅速审判法》认定一名重要证人在其因病隔离期间“无法出席”是恰当的）。

⁵⁵ 美国诉 *Allen* 案，在被告人接触水痘后法院继续对其审判，既因为其无法出席，也因为“抑制有害感染对公众的明显益处。” 2012 WL 3763910, 第 4 页 (D.V.I. 2012 年 4 月 30 日)

⁵⁶ 联邦监狱开始报告犯人中的病例，《美国监狱中的新冠肺炎病例引起了对未作准备的体系的更多担忧》，CNN（更新于 2020 年 3 月 20 日）。作为回应，一些监狱开始阻止律师探视，这有可能造成更多可排除的延迟。参见《美国法典》第 18 卷第 3161(h)(7)(B)(iv)条。

⁵⁷ 18 U.S.C. § 3161(h)(7)(B)(iv).

⁵⁸ Typically, these type of continuances are only warranted under the Act for unusually complex, multi-defendant prosecutions. See *id.* § 3161(h)(7)(B)(ii).

⁵⁹ *Id.* § 3161(h)(7)(B)(iv).

⁶⁰ *But see id.* § 3161(h)(7)(C) (preventing judges from considering “general congestion of the court’s calendar” when granting an ends-of-justice continuance).

⁶¹ 《美国法典》第 18 卷第 3161(h)(7)(B)(iv)条。

⁶² 通常，此类延期只有在异常复杂、涉及多个被告人的诉讼中才会根据《迅速审判法》得到批准。参见第 3161(h)(7)(B)(iv)条。

⁶³（同上），第 3161(h)(7)(B)(iv)条。

⁶⁴ 但参见（同上）第 3161(h)(7)(C)条（阻止法官在批准出于公平合理的目的的延期时考虑“法院日程的一般积压”）。

Conclusion 结束语

If you have a matter that may be affected by the disruption caused by COVID-19, or if you have a question about how the current disruption to courts and DOJ may affect the statute of limitations or the Speedy Trial Act, please contact the following members of our White Collar Defense and Investigations and Appellate and Supreme Court practices:

如果您有一项可能受 COVID-19 影响的事项，或您对于目前法院和司法部遭受的扰乱可能对诉讼时效或《迅速审判法》产生什么影响有疑问，请联系我们白领犯罪辩护和调查以及上诉和最高法院业务团队的下列成员：

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