

**FILED**

MAY 21 2021

**PATRICK KEANEY**  
Clerk, U.S. District Court

By \_\_\_\_\_  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

IN RE: Special Sessions of Court )  
Pursuant to 28 U.S.C. § 141(b)(1) ) General Order No. 21-10

GENERAL ORDER

The July 2020 decision of the United States Supreme Court in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), and subsequent decisions by the Oklahoma Court of Criminal Appeals, have profoundly affected court operations in the United States District Court for the Eastern District of Oklahoma. Felony defendant filings have surged from a pre-*McGirt* yearly average of 97 indictments. In 2020, and with only five months of *McGirt* indictments, there were 147 indictments filed. Through the May 2021 grand jury session there have been 215 indictments. Using 2023 as an updated baseline, projection models utilized by the Court and the Administrative Office of the United States Courts ("AO") place the number of annual criminal felony filings in the Eastern District to be in the range of 1,023 to 2,558 indictments. As these numbers reflect, the Eastern District is in the midst of an historic, monumental shift in jurisdictional responsibilities in relation to criminal prosecutions. The Court began to feel the effects of the *McGirt* ruling during the height of the COVID-19 pandemic when the Court's ability to conduct in-person trial proceedings was severely hampered. Consequently, there exists a significant number of criminal and civil cases awaiting trial.


The Eastern District has one and a half District Judges. The half-time "roving" district judge also serves the United States District Court for the Northern District of Oklahoma. Faced with the unprecedented increase in criminal filings, the Court has reached out to colleagues in both the United States District Court for the Western District of Louisiana and the United States District Court for the Western District of Oklahoma for their assistance. On October 15, 2020, Western District of Louisiana District Judge, David C. Joseph, was designated to perform duties in this Court and, shortly thereafter, began receiving criminal case assignments. Additionally, in April 2021, the six active District Judges in the Western District of Oklahoma began taking assignments of Eastern District criminal cases and have committed to taking assignments through the remainder of the calendar year.

The Court does not have enough courtrooms to accommodate the numerous criminal and civil cases set for trial in June 2021 before all nine District Judges assigned cases in the Eastern District. The United States Courthouse in Muskogee, Oklahoma, has two District Judge courtrooms available for trials. The Court has also negotiated a License Agreement with Muskogee County for use of the Muskogee County Courthouse. That agreement is awaiting the approval of the AO. With 40 cases to be set for trial in

June 2021 among nine District Judges, the Court finds that emergency conditions exist because sufficient locations are not reasonably available within the Eastern District to permit all nine available District Judges to try their assigned cases. Specifically, the Eastern District has neither sufficient courtroom space nor sufficient chambers space to accommodate all nine District Judges. With the grand jury expected to return a similar, or likely higher, number of indictments from this point forward, the Court finds this will be an ongoing, emergency situation. A reasonable, minimally disruptive solution exists to allow for additional trial settings. The Court finds that its neighboring district to the west, the United States District Court for the Western District of Oklahoma, has offered its courtrooms in its Oklahoma City, Oklahoma, courthouse to supplement the trial settings in the Eastern District. Thus, the Court finds that emergency conditions resulting from the onslaught of criminal cases arising out of *McGirt*, and the logjam of cases created due to the COVID-19 pandemic, authorize special sessions of court to be held in the Western District of Oklahoma for both criminal and civil trials. 28 U.S.C. § 141(b)(1). Due to *McGirt*, the Court does not believe this emergency will abate without additional judicial and facilities resources being directed to the Eastern District on a permanent basis. Consequently, an end date to this emergency cannot be ascertained, but the Court will nonetheless review this order within 90 days to determine the necessity of the utilization of the Western District of Oklahoma's courtrooms as set forth above.

The Court notes that before exercising this authority under 28 U.S.C. § 141 it consulted with the Eastern District's offices of the United States Attorney, Federal Public Defender, Probation, and United States Marshal for their views and concerns. While some opposition to invoking the Court's emergency authority was expressed by the United States Attorney's Office, the Court has determined that the interests of justice in assuring speedy trials weigh in favor of resort to the special sessions procedures of 28 U.S.C. § 141. Finally, the Court directs the United States Marshal for the Western District of Oklahoma to furnish transportation and subsistence to the same extent as that provided in 18 U.S.C. §§ 4282 and 4285. 28 U.S.C. § 141(b)(5).

It is so ordered this 21<sup>st</sup> day of May, 2021.

  
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RONALD A. WHITE  
CHIEF JUDGE, UNITED STATES DISTRICT COURT