

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DAVID SCOTT, JEREMY CERDA, OSMAN AK,
MERUDH PATEL, GREGORY HARDY, and
LARRY WILLIAMS, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

FORMER WARDEN HERMAN E. QUAY,
FACILITIES MANAGER JOHN MAFFEO, and
THE UNITED STATES OF AMERICA,

Defendants.

NOTICE OF MOTION

Civil Action No.
19-CV-1075

(Brodie, J.)
(Gold, M.J.)

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law, the Declaration of Asiamel Cruz, the Declaration of Seth D. Eichenholtz, with exhibits, and upon all prior pleadings and proceedings herein, Defendants Quay, Maffeo and the United States of America will move this Court before the Honorable Margo K. Brodie, United States District Judge for the Eastern District of New York, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on a date and time to be determined by the Court, for an Order dismissing Plaintiffs' Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's January 24, 2020 Order, Plaintiff's memorandum of law in opposition, if any, should be served upon the undersigned no later than **March 31, 2020**.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's January 24, 2020 Order, Defendants' reply memorandum of law, if any, should be served upon the Plaintiff, and the fully briefed motion filed, no later than **April 21, 2020**.

Dated: Brooklyn, New York
February 13, 2020

RICHARD P. DONOGHUE
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By: /s/
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UNITED STATES DISTRICT COURT
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DAVID SCOTT, JEREMY CERDA, OSMAN AK,
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LARRY WILLIAMS, individually and on behalf of
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FORMER WARDEN HERMAN E. QUAY,
FACILITIES MANAGER JOHN MAFFEO, and
THE UNITED STATES OF AMERICA,

Defendants.

**DECLARATION OF AUSA
SETH D. EICHENHOLTZ**

Civil Action No. 19-CV-1075

(Brodie, J.)
(Gold, M.J.)

SETH D. EICHENHOLTZ, declares pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct:

1. I am an Assistant United States Attorney, of counsel to Richard P. Donoghue, United States Attorney, Eastern District of New York, attorney for defendants Quay, Maffeo, and the United States of America. I have responsibility for the defense of this action. I submit this declaration in support of Defendants' Motion to Dismiss the Amended Complaint, and to place before the Court true and correct copies of various documents that support Defendants' motion.

2. Attached as Exhibit A is a true and correct copy of the Declaration of Herman Quay, dated February 15, 2019, filed in *Federal Defenders of New York v. Federal Bureau of Prisons, et al.*, 19-CV-660 (MKB)(SMG).

3. Attached as Exhibit B is a true and correct copy of the Declaration of John Maffeo, dated February 15, 2019, filed in *Federal Defenders of New York v. Federal Bureau of Prisons, et al.*, 19-CV-660 (MKB)(SMG).

Dated: Brooklyn, New York
February 13, 2020

RICHARD P. DONOGHUE
United States Attorney
Eastern District of New York
Attorney for Defendants Quay, Maffeo and United States of America
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EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FEDERAL DEFENDERS OF NEW YORK, INC.,
on behalf of itself and its clients detained at the
Metropolitan Detention Center – Brooklyn,

Plaintiff,

- against -

FEDERAL BUREAU OF PRISONS, et al.,

Defendants.

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Civil Action
No. 19-CV-660

(Brodie, J.)
(Gold, M.J.)

DECLARATION OF WARDEN HERMAN QUAY

I, Herman Quay, do declare and state as follows:

1. I am a Warden employed by the United States Department of Justice, Federal Bureau of Prisons (BOP), and I am assigned to the Metropolitan Detention Center in Brooklyn, New York (MDC). I have been Warden at MDC since December 2015.
2. As Warden, I supervise all aspects of the operation and function of MDC. My responsibilities include ensuring the safety of all in the institution and ensuring the orderly running of the institution. MDC currently houses approximately 1,650 federal inmates.
3. MDC policies currently provide for attorney legal visits five days a week for 11.5 hours per day, and on weekends and holidays for six hours per day. Additionally, all of MDC's general population housing units have dedicated, unmonitored phones that inmates can use to contact the Federal Defenders of New York.

4. Although there are slight variations in our local policies, generally, the MDC's attorney visitation schedule is from 8:00 a.m. until 7:30 p.m., Monday through Friday, and from 8:00 a.m. until 2:00 p.m., Saturday and Sunday.
5. Attorney visits are typically held in visitation rooms in the East and West buildings of MDC, each of which also contain private conference rooms for attorney-client meetings. Because the visitation rooms are often crowded during social visiting hours, the hours from 8:00 a.m. until 12:00 p.m. on Monday through Friday are reserved exclusively for attorney visitation. We encourage attorneys to conduct their visits during those hours if possible.
6. The visitation rooms are the only place at MDC where inmates are permitted to interact with members of the general public. This area requires extremely close monitoring to assure the physical safety of inmates and members of the public, and to prevent the exchange of weapons, drugs, and other prohibited contraband.
7. BOP regulations require that inmates have reasonable access to counsel and legal materials, and I am acutely aware of the importance of attorney visits at MDC. During my time as Warden, the only times when inmate visitation is cancelled is when doing so is necessary to ensure the safety and good order of the institution. To the best of my memory, and based on our visitor logs, inmate visitation was cancelled for a full day on fewer than 10 days in all of 2018.

A. Cancellation of Inmate Visitation On January 4 & 5, 2019

8. On January 4, 2019, I was informed by MDC management and staff that the West Building had experienced a partial power outage and was operating on emergency lighting in numerous areas. I was informed by my facilities staff that the power outage

likely would be repaired by the next day.

9. A power outage of this scale significantly impacts the safe and orderly operation of the institution. The emergency lighting in the West visiting room is intermittent, dim, and can result in certain areas of near total darkness. There are also no external windows in that room to provide additional natural lighting during the daytime hours. In addition, when power is lost at MDC's visitor lobby, as it was on these days, the security equipment, including a metal detector and a wave millimeter machine used to scan visitors for weapons and other contraband, could not be used.
10. In my determination, these conditions made it unsafe for inmates to meet with visitors, especially because our visiting area had greatly reduced lighting. As a result, I cancelled all inmate visitation until our staff was able to fully restore power to the West Building.
11. Power was restored in the West Building in the evening of January 5, 2019. As a result, I ordered the resumption of normal inmate visitation on January 6, 2019.

B. Cancellation of Inmate Visitation on January 14, 2019

12. From December 22, 2018 through January 25, 2019, MDC, along with the rest of BOP and certain other federal governmental agencies, was operating under a lapse of funding. During this time, correctional staff were required to report to work. Nevertheless, during this period there were several days that more staff than usual called in sick and did not report to work.
13. Every morning, my Captain, who is in charge of the personnel roster for custody staff, reports to me regarding staffing levels. If MDC has an unexpected staffing shortage, we have to address such shortages by shifting staff from postings that are considered less essential (in terms of providing for the safety and security of the institution) to postings

that are considered more essential.

14. Staffing shortages rarely impact inmate visitation because, for the reasons I have noted above, security for the visitation rooms is considered a high priority. In general, we are able to reallocate staff from other areas to prevent any interruption of visits.
15. On January 14, 2019, we had approximately double the usual number of staff not come to work because they reported being sick. As a result, we did not have enough staff to cover the supervision of inmate visitation without leaving other essential posts in the facility, such as inmate housing areas, inadequately staffed.
16. In order ensure the safety of the inmate housing areas, and other essential areas of MDC, I cancelled inmate visitation for January 14, 2019.
17. This was the only day during the shutdown that we had to cancel inmate visitation on account of staffing shortages.

C. The January 27, 2019 Fire and Subsequent Power Outage

18. On January 27, a major electrical fire impacted the MDC.
19. After learning of the fire that occurred in the MDC on January 27, 2019, my staff reported to me regarding the impact to the institution. By late that same day, I learned that the fire had destroyed the “Priority 3” power distribution equipment, one of three power distribution systems in the West Building. I was informed by staff that, for the time being, repairs were more feasible and quicker than replacement, and that the repairs would likely take at least a week.
20. Throughout this emergency, we continued to assess the operational and security challenges presented by the facility issues on a day-by-day basis. I was informed, for instance, that only essential systems, such as security equipment, fire equipment, health

equipment, electrical doors, and emergency lighting systems had power.

21. The power outage resulting from the January 27, 2019 fire again left the visiting area without sufficient lighting, and left critical security equipment in the visitor lobby without the necessary electricity to operate. Again, these conditions meant that inmate visitation in the West Building would present a serious security risk to MDC's staff, inmates, and visitors. Accordingly, on each day while electrical systems remained compromised, from January 27, 2019 through February 2, 2019, I made the decision, on a day-by-day basis, to cancel all inmate visits.
22. Despite these conditions, and during this entire time, all inmates in the general population had access to dedicated, unmonitored phones to contact the Federal Defenders. These phone lines were operational throughout this period despite the lack of power and lighting in many areas. When inmates were on lockdown in their cells, however, they were not able to access these phones.
23. During the ensuing days, I continued to assess the status of the institution and alternative arrangements to meet inmates' needs, including visitation, while maintaining institutional order and security.
24. One option I considered was to allow for inmates housed in the West Building to receive legal visitors in the East Building, which did not lose power. This option presented many challenges and risks. For example, West Building inmates would need to be escorted through a narrow, winding hallway linking the East and West Buildings. The west side of the link was affected by the power outage and had several areas of total darkness that would have posed a significant safety risk for both inmates and staff. Accordingly, additional staff would have been required to escort inmates safely. Furthermore, per

practice and in order to ensure safe movement, the remainder of inmate movement in the institution is restricted when individual inmates are escorted throughout the building in order to prevent inadvertent contact with separatees. This could impact movement to and from health services and program areas. Thus, escorting inmates from their housing units in the West Building to the East visiting room would require more time and more staff. The extra staff was a consideration because we already had additional staff on the housing units during the day due to the limited lighting.

25. Additionally, approximately 1,600 male inmates live in the West Building. Currently, the East Building houses only female inmates. Because MDC's male and female inmates are separated from one another, using the East Building visiting area for male inmates would limit the time available for female inmate visits in the East Building.
26. Finally, as with all inmate movement, we would have needed to ensure that we never moved inmates together who, for various security or other reasons, were required to be kept separate from one another.
27. For all these reasons, I determined that, given the security risks and operational challenges with this proposal, and given the estimated time remaining to complete repairs to the power system, visitations for inmates in the West Building could not be relocated to the East Building. Despite the challenges described above, I had determined that if the power outage was going to continue for longer than one week, MDC would make plans to restart legal visiting.
28. By Saturday, February 2, 2019, my staff was able to restore sufficient lighting to the visiting area in the West Building to resume inmate visitation. Accordingly, on Sunday, February 3, 2019, we were able to allow inmate legal visitation to resume under the

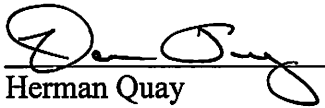
normal schedule in the West Building.

29. Later on Sunday, February 3, 2019, I was informed that a large group of protestors who had gathered outside MDC had breached the entrance to the facility. As a result, for security reasons, we decided to cancel visitation and ordered staff to safely evacuate the visitors currently in the facility.
30. Later that same day, February 3, 2019, electrical power was fully restored to the West Building.

D. Cancellation of Inmate Visitation on February 4, 2019

31. On Monday, February 4, 2019, with power restored, I expected visits to proceed as usually scheduled. However, at some point that morning, the MDC received a bomb threat and when reported to NYPD, they confirmed they also received a bomb threat.
32. As a result of the bomb threat, I ordered certain mandatory security protocols to take effect. These protocols included the safe evacuation of visitors and outside contractors, and the cancellation of inmate visiting until staff could ensure that there was no threat to the facility.
33. Later that day, my staff reported that the building was clear. Visitation resumed that evening after the 4:00 p.m. count cleared, and once again, on February 5, 2019, we were able to resume normal visiting hours.
34. Since that day, per MDC policy, daily inmate visitation at MDC has proceeded each and every day.

I declare under penalty of perjury in accordance with the provisions of 28 U.S.C. § 1746 that the above is accurate to the best of my knowledge and belief.


Herman Quay
Warden, MDC Brooklyn

2-15-19
Date

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FEDERAL DEFENDERS OF NEW YORK, INC.,
on behalf of itself and its clients detained at the
Metropolitan Detention Center – Brooklyn,

Plaintiff,

- against -

FEDERAL BUREAU OF PRISONS, et al.,

Defendants.

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Civil Action
No. 19-CV-660

(Brodie, J.)
(Gold, M.J.)

DECLARATION OF JOHN MAFFEO

I, John Maffeo, do declare and state as follows:

1. I am a Facilities Manager employed by the United States Department of Justice, Federal Bureau of Prisons (BOP), and assigned to the Metropolitan Detention Center in Brooklyn, New York (MDC). I have been Facilities Manager at MDC Brooklyn since July 22, 2018. Prior to my promotion, I was Acting Facilities Manager since January 7, 2018.
2. As Facilities Manager, I supervise the facilities staff and overall facilities department operations. Specifically, I supervise the general maintenance staff, the HVAC (heating, ventilation, air conditioning) staff, power house (boiler and cooling system) staff, staff electricians, staff plumbers, staff engineers, three general foremen, and a facilities assistant.
3. The MDC is comprised of two buildings, commonly known as the “East” and “West” buildings. These buildings are connected through an internal hallway connecting the first floor of each building, commonly referred to as the “link.”

4. The West building has three different electrical power distribution systems. This is because BOP regulations require redundancies for essential power systems. The three power systems are designated as Priorities 1, 2 and 3. As determined by BOP guidelines, Priority 1 and 2 power all life safety equipment, fire equipment, door locks and security systems, power, emergency lights, and elevators. Priority 3 powers the remaining electrical systems in the institution. This includes non-emergency lighting and systems.
5. The equipment that MDC Brooklyn staff use in the lobby to check visitors for weapons and other contraband plug into wall outlets and are powered by Priority 3 electrical systems.

A. The January 4-5, 2019 Power Issue

6. On January 4, 2019, at approximately 6:00 a.m., I received a report that the lights went out in the West building of MDC Brooklyn. I subsequently learned that the Priority 3 power distribution system went down because a circuit breaker was tripped, stopping the flow of external power from the utility company. I attempted to mitigate the power failure by activating three backup generators. However, at 1:30 a.m. on January 5, while the contractor was troubleshooting other issues, all three generators started to fail. As a result, we engaged with a contractor to fix the generators while continuing to work to reset the circuit breaker for Priority 3 systems. During this period, all Priority 3 systems were without power, including non-emergency lights in the visiting area and power to the lobby equipment used to check visitors.
7. I advised Warden Quay and his management staff of the power outage. I also advised him that I expected the power would be restored by the next day.
8. On January 5, 2019, at approximately 5:00 p.m., we restored power to the building by

resetting the Priority 3 circuit breaker. On January 6, 2019, a temporary generator was delivered to MDC while our three generators were out of service. By January 7, the temporary generator was wired to our system and on standby if necessary. On January 11, all of MDC's generators were repaired and operational.

B. The January 27, 2019 Electrical Fire and Subsequent Power Outage

9. On Sunday, January 27, 2019 at around 1:00 p.m., I received a call from my staff on shift at MDC that there appeared to be a fire on the first floor of the building. I instructed my staff member to contact the operations lieutenant about the emergency.
10. When I arrived at MDC an hour after receiving the call, I called Associate Warden Garcia and the general foremen I supervise to report to work. The New York City Fire Department was already on site. They located the fire in the electrical room within a mechanical room on the second floor. ConEdison, the utility company that supplies power to MDC, had also been called and was on site.
11. I went to the electrical room to assess the damage. The fire completely and fully destroyed the equipment that distributes power to the Priority 3 power systems. Fortunately, the Priority 1 and Priority 2 equipment was not damaged in the fire.
12. Given my background in electrical systems, I was familiar with the kind of equipment that was destroyed in the fire. I knew that we would not be able to restore power overnight. I also knew that we would not be able to use backup generators to supply power, because those generators would also use the equipment that was destroyed in the fire. I advised the Warden that the power would likely be out for several days.
13. By approximately 4:30 p.m., I was notified that the fire was clear and I could begin an inspection of the building. I assessed the ventilation system and set up emergency

lighting in the parking lot outside of the building.

14. Without electrical power, the whole building was operating on emergency lighting. The West Building's visitation room had only limited emergency lighting. In addition, the security equipment in MDC's West building lobby, including a metal detector and a millimeter wave scanner used to scan visitors for weapons and other contraband, could not be used because these devices require an electrical connection.
15. On Monday, January 28, I met with an electrical contractor to evaluate the system and set up a plan to repair it. The contractor gave me an initial estimate of ten days to build temporary equipment to replace the damaged equipment. The contractor started to work immediately.
16. Over the course of the next week, I continued to assess the state of the electrical equipment and, at the Warden's request, search for solutions to power as much as the building as possible.
17. I was able to locate some spare circuits on electrical panels that received power from Distribution 1 and Distribution 2, and reprogram those circuits to provide additional lighting to certain areas. Through the course of the week, we did successfully restore some lighting to some essential areas of the West building. However, we could not use this method to restore power to all areas and all systems, including inmate cells, because there was not enough electrical amperage in these spare circuits to supply such a large power demand.
18. In general emergency lighting is provided to those areas deemed most essential to safety and security.
19. First, we restored additional lighting in the health services department, food services area,

and receiving and discharge. Starting Thursday, January 31, we began working to restore additional lighting to the visiting room, per the Warden's request. By late Friday, February 1, we were able to restore additional lighting to the visiting area.

20. Power was ultimately fully restored on Sunday, February 3 before 6:30 p.m. All equipment and lighting resumed functionality from that point forward.

I declare under penalty of perjury in accordance with the provisions of 28 U.S.C. § 1746 that the above is accurate to the best of my knowledge and belief.

John Maffeo
Facilities Manager, MDC Brooklyn

2/15/19
Date