



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

February 4, 2019

By ECF

The Honorable Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Jose Segura-Genao*, No. 18 Cr. 219 (AT)

Dear Judge Torres:

I am an Assistant United States Attorney in the Civil Division of the United States Attorney's Office for this District, and have been assigned to conduct the hearing that Your Honor ordered relating to recent events and conditions at the Metropolitan Detention Center ("MDC") in connection with the above-referenced matter. I write respectfully to update the Court on recent developments and to request an adjournment of the evidentiary hearing scheduled for tomorrow, February 5, 2019, at 11:00 a.m. Defense counsel does not consent to the proposed adjournment.

A. Update on Living Conditions at MDC

United States Bureau of Prisons ("BOP") personnel inform us that power and normal operations generally have been restored at the MDC, and officials there are intensively working on a variety of issues, including meeting each inmate's needs in the aftermath of the weeklong power outage that MDC experienced. With respect to the defendant in this case, MDC informs us that Defendant Segura-Genao is housed in Unit G42, which consists of a large central common room with cells arrayed around that room. I have been advised by MDC personnel that on January 30, 2019, the temperature in the cell area and common area of G42 was 67 degrees. On February 1, the temperature in the cell area was 65.2, and in the common area was 66.6 degrees.¹ On February 2, the temperature in the cell area was 68, and in the common area was 70. MDC personnel inform us that so far as they are aware, Defendant Segura-Genao has not made any complaints about a denial of access to healthcare.

¹ BOP policy provides that during the winter, temperature set points will be targeted to 68 degrees Fahrenheit in the heating season. It further provides that BOP should maintain temperatures as close to the targeted set point as possible, but that "due to issues such as the age of the cooling and heating systems and the inability to control temperatures in individual spaces, occupants may experience a range of temperatures in their space that is a few degrees on either side of the targeted set point." See BOP Facilities Operations Manual, Chapter 16, pages 5-6, <https://www.bop.gov/policy/progstat/4200.12.pdf>

Regarding the situation at MDC more generally, BOP has advised this Office that on Sunday, January 27, 2019, at approximately 10:00 a.m., there was an electrical fire in the mechanical room of the West building at MDC, which caused a power outage. The power outage caused multiple problems. The main lighting system went out in the MDC's West building, leaving emergency lighting only; emergency lighting existed in the common areas and ingress and egress areas to the building, but not in individual cells. Telephones, computers, and televisions that are normally available to individuals at MDC did not work because of the electrical issue, but individuals housed at MDC remained able to use other phones that connect with Federal Defender's offices. Legal and social visits were temporarily suspended because the visiting area's screening devices were down, and there was no lighting in the visiting area. On the evening of February 3, 2019, electricity was restored in the building. Lighting, telephones, computers, and televisions are now operational.

Regarding heat at the facility, MDC informs us that the electrical outage did not cause the heat to go out, nor did it lead to a lack of hot water, because those systems were not affected by the power outage. As detailed below, MDC personnel took heat readings in each unit's common space and in at least one cell per unit at various points through last week to attempt to identify any widespread problems. The week before the electrical outage, there had been a heating issue in Unit I62. Apparently, each unit is heated by two individual air handlers—one in the cell area and one in the common area. The air handler in the cell area of Unit I62 broke down, and on January 23, 2019, the temperature in the cells of Unit I62 was approximately 59 degrees. BOP recognized this issue and took steps to repair the air handler, including fixing a broken coil and the motor. By February 2, 2019, the issues in Unit I62 appeared to be fully resolved.

On January 30, 2019, BOP received notice of complaints about heating issues in other units and cells. On that day, BOP began conducting temperature checks in the units. BOP uses a laser thermometer to test the temperature; this is a point and shoot device that shows the surface temperature at various locations. Temperature checks in the cells were 67 degrees or higher, with the exception of Unit I62, which was 65 degrees. On February 1, 2019, the cell temperatures ranged between 65.2 and 74, again with the exception of Unit 62, which was 63.8. BOP has continued to work to address temperature issues, and on February 2, 2019, temperature checks in the cells ranged between 68 and 80 degrees, with an average temperature of 71.06 degrees. On Sunday, February 3, 2019, temperature checks in the cells showed temperatures ranging between 67.6 and 75.8. We are still waiting on temperature reports at MDC for today, February 4, 2019.

B. Request for Adjournment

As stated above, MDC personnel are currently fully occupied with bringing MDC back to full operation and addressing issues caused by the loss of electrical power. Further, numerous urgent court proceedings regarding living conditions at MDC have been scheduled in this Court and in the Eastern District of New York ("EDNY"), and require simultaneous attention by BOP officials, some of whom are scheduled to be before Your Honor tomorrow.

For example, the Federal Defenders filed a complaint and a request for a temporary restraining order today relating to living conditions and lack of social and legal visitation at MDC, *see Federal Defenders of New York, Inc. v. Federal Bureau of Prisons and Warden Herman Quay*, 19 Civ. 660 (E.D.N.Y). A temporary restraining order hearing was held today, and the Court scheduled a further proceeding for February 13, 2019. In addition, Judge Donnelly of the Eastern District also has scheduled a proceeding to address conditions in the context of a criminal case, as have Judges Engelmayer and Woods of this Court (without requiring appearances by BOP officials), and Magistrate Judge Pitman has scheduled a similar hearing for this afternoon, and we anticipate other similar proceedings. BOP officials have also been required to appear tomorrow in two different EDNY matters. On February 1, 2019, Chief Judge Irizarry directed inspection of the MDC by a representative of the Federal Defenders and the U.S. Attorney's Office of the EDNY. We also believe that the EDNY Board of Judges is planning to meet and discuss conditions, as well as to possibly hear directly from officials, tomorrow around midday.

In sum, because the living conditions at MDC are evolving and continue to require intensive work by MDC personnel, and because we believe it would serve judicial economy to coordinate judicial proceedings regarding recent events at MDC, we respectfully request that the Court adjourn the evidentiary hearing scheduled for tomorrow. We further understand that Your Honor intends to tour MDC tomorrow, and thus we alternatively request that the hearing take place after the tour, so Your Honor has a more complete picture of the present situation at the facility.

The undersigned as well as the case's assigned Criminal Division AUSA will still appear before Your Honor for a conference to provide a full update on all issues addressed in this letter.

We thank the Court for its consideration of this requests.

Respectfully submitted,

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