

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,

*-against-*

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

Defendants.

No. 19 Civ. 1075

**AMENDED CLASS ACTION  
COMPLAINT AND JURY  
DEMAND**

David Scott, Jeremy Cerda, Osman Ak, Merudh Patel, Gregory Hardy, and Larry Williams, on behalf of themselves and others similarly situated, and by and through their attorneys, Emery Celli Brinckerhoff & Abady LLP, the Cardozo Civil Rights Clinic, and Alexander A. Reinert, allege as follows for their complaint:

**PRELIMINARY STATEMENT**

1. Wardens and jail managers must provide the people in their jails with a minimal civilized measure of life's necessities—adequate safety, food, warmth, exercise, hygiene, and medical care. These are some of the most basic conditions of confinement the Constitution requires. These standards define a civilized society.

2. This case concerns a humanitarian crisis that unfolded in Brooklyn's federal jail, the Metropolitan Detention Center ("MDC"), during the bitterly cold week of January 27, 2019 to February 3, 2019. The crisis is remarkable both because of how obvious it was in the making and how little was done about it once it happened. The general failings of the MDC's

infrastructure and management were widespread and obvious for years before; problems with the heating and electrical systems in particular were erupting throughout January 2019. And when the expected happened, the MDC's then-Warden, Defendant Herman Quay, and Defendant Facilities Manager John Maffeo, engaged in a shocking dereliction of their obligations to provide these most basic minimal living standards to more than a thousand people in his care and custody.

3. Following an electrical fire, the West Building of the MDC was without normal electricity beginning on January 27, 2019. In the seven-day period that followed, Defendants subjected the men detained in the MDC West Building, the majority of whom were in custody awaiting their trials, to inhumane conditions that posed unreasonable and substantial risks to their health and safety.

4. For more than a week, the MDC's cells remained dark and cold. People were confined in near pitch-black darkness. People sat shivering in their beds, huddled under blankets with little or no heat in the cells.

5. The lack of light and heat was compounded by an array of other brutal conditions. People were confined to their cells continuously for days. Hot showers and hot water were suspended or severely limited. Cells with toilets that were not functioning were filled with the smell of decaying feces. People continued to live in their soiled clothing and bedsheets without any laundry. Requests for medical and psychiatric care were ignored. People had no access to regular or hot food. Communication with the outside world—whether by email, phone, or visits from lawyers and family members—ceased. People struggled to maintain their sanity in a void of information about when the blackout would end. And of course, jail employees were forced to work under these impossible circumstances.

6. These horrifying conditions, independently and through their mutually reinforcing effects, produced a serious deprivation of basic human needs for the people confined in the MDC.

7. Defendants Herman E. Quay and John Maffeo (the “Individual Defendants”) knew about the problems with the MDC’s infrastructure well before this particular crisis and knew about the crisis when it happened. They were aware of the appalling conditions at the MDC in real time and, as each hour of the crisis unfolded, they failed to make reasonable efforts to remedy those conditions. They acted with a complete disregard for the humanity of the people who were being held in the jail, and for the people who were working in the jail. They did not provide people with additional blankets or clothing. They did not seek assistance from Con Edison or FEMA in obtaining backup power sources. They did not take any measures to protect the sick, the elderly, or the disabled, who were most immediately vulnerable to harm. Instead, the Individual Defendants locked the more than one thousand people in the jail in their cells, and left them to freeze in short-sleeved, cotton jumpsuits in the dark as a polar vortex blasted New York City.

8. Mr. Scott, Mr. Cerda, Mr. Ak, Mr. Patel, Mr. Hardy, and Mr. Williams, five former MDC detainees, bring this action for damages on behalf of themselves and all other people subjected to these conditions to redress Defendants’ violation of their rights under the Fifth and Eighth Amendments of the Constitution of the United States pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), and negligence pursuant to the Federal Tort Claims Act.

## PARTIES

9. Plaintiff DAVID SCOTT is a citizen of the United States and a 60-year-old man who resides in Queens County, New York. At all times relevant to this Complaint, Mr. Scott was in the custody of the Federal Bureau of Prisons (“BOP”) at the Metropolitan Detention Center located in Brooklyn, New York. Mr. Scott was released from the MDC, and BOP custody, on February 20, 2019.

10. Plaintiff JEREMY CERDA is a citizen of the United States and a 25-year-old man who resides in Queens County, New York. At all times relevant to this Complaint, Mr. Cerda was in the custody of the BOP at the Metropolitan Detention Center located in Brooklyn, New York. Mr. Cerda was released from the MDC, and BOP custody, on February 5, 2019.

11. Plaintiff OSMAN AK is a citizen of the United States and a 47-year-old man who resides in Long Island, New York. At all times relevant to this Complaint, Mr. Ak was in the custody of the BOP at the Metropolitan Detention Center located in Brooklyn, New York. Mr. Ak was released from the MDC on July 11, 2019.

12. Plaintiff MERUDH PATEL is a Citizen of the United States and a 31-year-old man who resides in Harrison, New Jersey. At all times relevant to this Complaint, Mr. Patel was in the custody of the BOP at the Metropolitan Detention Center located in Brooklyn, New York. Mr. Ak was released from the MDC on September 9, 2019.

13. Plaintiff GREGORY HARDY is a Citizen of the United States and a 45-year-old man who resides in Kingston, New York. At all times relevant to this Complaint, Mr. Hardy was in the custody of the BOP at the Metropolitan Detention Center located in Brooklyn, New York. Mr. Hardy was released from the MDC on July 16, 2019.

14. Plaintiff LARRY WILLIAMS is a Citizen of the United States and a 45-year-old man who resides in New York City. At all times relevant to this Complaint, Mr. Williams was in the custody of the BOP at the Metropolitan Detention Center located in Brooklyn, New York. Mr. Williams was released from the MDC on September 18, 2019.

15. Mr. Scott, Mr. Cerda, Mr. Ak, Mr. Patel, Mr. Hardy, and Mr. Williams sue for compensatory and punitive damages on behalf of themselves and all other members of the Plaintiff class who are similarly situated.

16. Defendant HERMAN E. QUAY, former Warden of the MDC, was at all times relevant to this Complaint the Warden of the MDC and acting within the scope and course of his employment with the BOP. As Warden of the MDC, Defendant Quay was responsible for and oversaw all day-to-day activity at the MDC. He was responsible for all aspects of the operation and function of the MDC. His responsibilities included ensuring the safety of all in the institution and ensuring the orderly running of the institution. Approximately 1,600 men live in the MDC's West Building. Defendant Quay knew that power and heat problems were foreseeable at the MDC, he was personally aware of the conditions described below at all times relevant to the Complaint, and he failed to take adequate steps to prevent these conditions or alleviate them when they occurred. He is sued in his individual capacity.

17. Defendant JOHN MAFFEO, Facilities Manager at the MDC, was at all times relevant to this Complaint acting within the scope and course of his employment with the BOP. He began working at the MDC as Acting Facilities Manager on January 7, 2018. As facilities manager, Defendant Maffeo is responsible for the maintenance of the MDC's buildings through the planning, direction, and management of all maintenance, repair, alterations, and construction projects. He is responsible for supervising the general maintenance staff; the facility's heating,

ventilation, and air conditioning (“HVAC”) staff; power house (boiler and cooling system) staff; staff electricians, plumbers, and engineers; three general foremen; and a facilities assistant. Defendant Maffeo knew that power and heat problems were foreseeable at the MDC, he was personally aware of the conditions described below at all times relevant to the Complaint, and he failed to take adequate steps to prevent these conditions or alleviate them when they occurred. He is sued in his individual capacity.

18. At all times relevant to this Complaint, Warden Quay’s and Facilities Manager Maffeo’s employer, the BOP, was an agency of Defendant UNITED STATES OF AMERICA, who is liable for the injuries caused by Defendants Quay and Maffeo pursuant to the Federal Tort Claims Act.

#### **JURISDICTION AND VENUE**

19. This action arises under the Fifth and Eighth Amendments to the United States Constitution and the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.*

20. This Court has jurisdiction over Plaintiffs’ claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1346(b)(1).

21. Venue in this case is based upon 28 U.S.C. § 1391(b)(2) and 28 U.S.C.A. § 1402(b). The Eastern District of New York is the proper venue because it is the judicial district wherein the acts and omissions complained of occurred.

#### **STATEMENT OF FACTS**

22. From January 27, 2019 to February 3, 2019, the MDC was plunged into darkness and cold (“the Conditions Crisis”). David Scott, Jeremy Cerda, Osman Ak, Merudh Patel, Gregory Hardy, Larry Williams, and more than a thousand other class members at the MDC were subjected to unconstitutional and inhumane conditions. Warden Quay was warned of

systemic problems at the MDC before the Conditions Crisis, he had notice of these horrific conditions during the crisis, and he failed to remedy them.

**I. Warden Quay's Knowledge of the MDC's Longstanding Infrastructure Failures**

23. Warden Quay knew what was coming: the MDC's problems were widespread and well known. Former MDC Warden Cameron Lindsay has said that over the last ten years, "the MDC was one of the most troubled, if not the most troubled, facility in the Bureau of Prisons." In a hearing after the Conditions Crisis, Judge Nicholas Garaufis remarked that the jail's physical state had been deteriorating for years.

24. Among many issues plaguing the jail for years, including the flagging physical plant and mismanagement, the MDC has long suffered from inadequate heat and a failing infrastructure. People detained at the MDC have long complained about the cold and fluctuating temperatures at the jail. The need to update the MDC's HVAC equipment in the West Building had been known to the BOP for at least five years prior to the Conditions Crisis.

25. The MDC has long struggled to regulate temperatures in the West Building.

26. In addition to the general concern about the MDC's infrastructure, Warden Quay was aware of specific warning signs concerning the jail's electricity and heat during the weeks leading up to the Conditions Crisis. He also was aware that the MDC's power and heat problems had serious spillover effects on critical aspects of jail functioning, such as attorney and family visitation.

27. The MDC had previously experienced a power outage and subsequent lockdown in November and December of 2018.

28. On information and belief, there were three blackouts in January 2019 before the Conditions Crisis during which the MDC lost power for a day or more.

29. For example, on January 4, 2019, the MDC management and staff informed Warden Quay that the West Building had experienced a partial power outage and was operating on emergency lighting in numerous areas. The facilities staff informed him that the power outage likely would not be repaired until the next day.

30. Warden Quay knew a power outage of this scale significantly impacts the safe and orderly operation of the institution. For example, he understood that the emergency lighting in the West visiting room was “intermittent, dim, and could result in certain areas of near total darkness.” Warden Quay cancelled attorney visits until the electricity could be restored.

31. The MDC did not remedy the January 4 blackout until the evening of January 5, 2019. Attorney visits were not reinstated until January 6, 2019.

32. In addition to electrical issues, John Maffeo, the MDC’s Facilities Manager, has testified that the MDC suffered heating issues beginning in and around the week of January 13–20, 2019.

33. On information and belief, Maffeo refused to let electricians into the related area, handled it personally, and refused to let anyone else assist him.

34. Union President Anthony Sanon, the chief of the correction officers’ union, stated that he “reported to his superiors in mid-January” that, as a result of “problems with cold,” “corrections officers were wearing scarves, coats and hats on duty.”

35. Multiple detainees have reported that the MDC was without heat in some areas from January 19, 2019 onward.

36. Warden Quay and his staff assured Sanon they would monitor the heat. Sanon later described the Warden’s response to the Conditions Crisis as superficial: “They were trying to sugarcoat it.”



37. By the third week in January, the heating issues persisted. Hai June Bencebi, another MDC employee, said it became “extremely cold” at the MDC around January 19, 2019.

38. The problems with the MDC’s heating and electricity came to a head on Sunday, January 27, 2019.

39. Con Edison would later attribute the power outage on January 27, 2019 to the failure to remedy preexisting problems at the jail. Instead of fixing the problem, the MDC had put more demands for more power on a weaker system.

## **II. Facilities Manager Maffeo’s Knowledge of the MDC’s Consistent Problems with Heat and Electricity**

40. Facilities Manager Maffeo had worked at the MDC since January 7, 2018, when he started as Acting Facilities Manager.

41. Since Maffeo began working at the MDC, the jail has suffered consistent heating and electrical problems.

42. Upon information and belief, many heating and cooling coils in air handlers serving housing areas of the MDC have required repair and replacement during this time.

43. In addition to the well-known issues regarding the jail’s inadequate heat and failing infrastructure, on January 4, 2019, a circuit breaker tripped, impacting the jail’s electrical supply.

44. Maffeo also testified in federal court regarding heating and power issues at the building “a week or two” before the Conditions Crisis. Maffeo stated that multiple heating coils burst on January 21, 2019, six days before the electrical fire, “including one responsible for heating inmate cells.”

## **III. The Conditions Crisis: Sunday, January 27, 2019 to Sunday, February 3, 2019**

45. At midday on January 27, 2019, the MDC experienced a partial power outage when an electrical panel caught fire in the jail’s control room.

46. After the electrical panel failed, the jail lost electricity in a number of systems and equipment, including overhead lighting and electrical outlets in cells and common areas, phones, computer systems, and overhead lighting and electrical outlets in staff offices and common areas. The MDC switched to emergency lighting. As MDC officers acknowledged, the blackout created a dangerous situation inside the MDC.

47. In addition to losing light—while New York City was gripped in what meteorologists were calling the “Polar Vortex,” record-breaking cold for the winter—the MDC had inconsistent and inadequate heat in the cells of the housing units.

48. The MDC’s temperature regulation issues adversely affected the conditions of confinement both before and during the Conditions Crisis.

49. Upon information and belief, the inadequate heat during this period was caused by longstanding HVAC problems in the facility, lack of preparation to keep people warm during colder than average weather, and/or the electrical fire. In addition, when repairing or adjusting the heating coils that burst on January 21, 2019, MDC staff either did not properly reset certain heating controls or mistakenly turned off the air handler, causing low temperatures during the Conditions Crisis.

50. The Individual Defendants and MDC staff did not effectively handle preexisting temperature regulation problems at the MDC and should have recognized the importance of ensuring that people in their care had sufficient warm clothing and blankets, given that the commissary was closed, and that indigent people especially were unable to purchase additional clothing for themselves.

51. All named plaintiffs suffered emotional distress, mental anguish, and physical injuries, including hunger and exposure to extreme cold without adequate clothing, as a result of

the Individual Defendants' failure to provide them with basic necessities during this humanitarian crisis.

#### **IV. The Lack of Transparency between MDC Officials and the Public**

52. When attorney and family visitation was suspended on January 27, 2019, the first day of the Conditions Crisis, MDC officials gave no explanation to visitors.

53. When visitation remained suspended the following morning, MDC officials still gave no explanation to visitors. Upon questioning, they stated that there was a lighting problem in the visitation area.

54. The Federal Defenders eventually learned of the Conditions Crisis through clients who had access to Federal Defender phone lines.

55. On January 31, 2019, the fifth day of the Conditions Crisis, prison officials released a statement to the New York Times, characterizing the Conditions Crisis as an "electrical failure" due to Con Edison. Con Edison quickly denied this.

56. On February 2, 2019, Representative Jerrold Nadler, a New York Democrat who heads the House Judiciary Committee, toured the MDC with other government officials. When Representative Nadler questioned Warden Quay regarding the lack of planning and urgency to resolve the power outage, as well as why the electricians were not even working that day, the Warden had no answers.

#### **V. The Unconstitutional and Inhumane Conditions of Confinement Experienced by Named Plaintiff David Scott During the Conditions Crisis**

57. On Sunday, January 27, 2019, Mr. Scott was in the recreation area at the MDC when the lights suddenly went out. Mr. Scott was caught off-guard by the electricity failure. Jail staff ordered that everyone immediately lock-in to their cells.

58. David Scott is 60 years old. He was born in 1959 and raised in Queens, New York.

59. Mr. Scott has worked for the past several years as a call center operator, assisting people calling to schedule rides for the Access-A-Ride program.

60. Mr. Scott first arrived at the MDC on January 10, 2019 to await his trial.

61. After his admission, Mr. Scott spent approximately one week in the Intake Unit, Unit 41. He was then transferred to Unit 61, where he remained until his release from the MDC on February 20, 2019.

62. On January 27, 2019, he was ordered into his cell in the midst of the power outage.

63. The next day, Monday, January 28, 2019, it became noticeably colder in the already-cold unit. Mr. Scott had no heat in his cell. The air vents in Mr. Scott's cell were blowing cold air.

64. Some MDC staff on the unit wore coats, hats and extra layers over their uniforms.

65. Mr. Scott's clothes consisted of one cotton short-sleeved jumpsuit, undershirts, underwear, and socks. He had no long-sleeved shirt or warm layers.

66. Mr. Scott was never offered or provided additional clothing or blankets.

67. Mr. Scott had only two thin blankets that he was given when he arrived at the MDC.

68. Mr. Scott wrapped himself in a blanket, but the frigid temperatures made it impossible to stay warm.

69. Beginning on January 27, 2019, Mr. Scott was locked in his cell for 24 hours a day for several days. Eventually, he was permitted to leave his cell for brief periods of time, but he spent most of his time during the Conditions Crisis locked alone in his freezing cell.

70. Because there was no light in the cell, Mr. Scott could not read. He ate meals in the dark and could not see his own food.

71. Mr. Scott had no access to email, phone calls, or television during the Conditions Crisis, other than the brief periods when he was permitted out of his cell and the Federal Defender phone line was available.

72. One MDC officer told Mr. Scott that it could take several weeks or a month for power to come back on.

73. Mr. Scott received meals later than the normal mealtimes and the food was often cold. Mr. Scott was constantly hungry throughout the Conditions Crisis.

74. He was unable to purchase food or clothing from the Commissary during the Conditions Crisis.

75. Mr. Scott spent most of the week lying under his covers huddling to stay warm. On occasion he would try to do push-ups to stay warm.

76. Mr. Scott had no access to hot water during the Conditions Crisis. He cleaned himself in his cell sink and took two cold showers.

77. Mr. Scott wore the same clothes for a week and rotated amongst three pairs of underwear.

78. Mr. Scott could not communicate with his family or girlfriend during the Conditions Crisis. When his girlfriend attempted to visit him on January 28, 2019, MDC staff turned her away and told her that visiting was suspended due to the blackout.

79. Mr. Scott was not able to receive counsel visits during the Conditions Crisis.

80. The living environment on Unit 61 was loud and hostile. People were banging on their cells in frustration that MDC staff had locked the unit into their cells and that no information was being provided to them about anything.

81. On several occasions, MDC officers arrived on the unit in a show of force, wearing full riot gear, including helmets and weapons, and ordered the unit to lock-in.

82. Mr. Scott learned that one detainee on the unit had suffered a seizure but had received no medical care even when the emergency button in his cell was pushed.

83. Mr. Scott observed that there seemed to be little staff on the unit, and it often felt abandoned. This was terrifying to Mr. Scott because of the prospect that he would be locked in his cell without help nearby in the event of a further emergency.

84. Without legal or social visits, phone calls, or commissary access, and locked alone in his cell with no foreseeable end to the situation, Mr. Scott felt isolated and afraid.

85. Mr. Scott felt claustrophobic in his cell. He tried to keep his mind occupied by thinking about his family, including his parents who both passed away in 2018.

86. Before the blackout, Mr. Scott was scheduled to receive an x-ray for numbness in his hands. He also had developed a skin fungus which required topical treatments, and he was taking antibiotics to treat an abscess under his armpit.

87. Mr. Scott requested medical care relating to these conditions on several occasions during the Conditions Crisis, but his requests were ignored.

88. Later in the week, Mr. Scott saw the protestors outside the jail protesting the conditions, on his behalf. He realized that the world had not forgotten about him and the other detainees. He was moved by the fact that the outside world was paying attention and cared.

89. On Friday, February 1, 2019, Mr. Scott appeared in this Court with his lawyer, Ashley Burrell from the Federal Defenders Office.

90. Mr. Scott's lawyer reported to the Court that conditions were dire at the MDC, specifically reporting that Mr. Scott had been without heat or electricity since January 27, 2019, that he had not received necessary medical care, and that he had been sitting in the dark in his cell for days in the brutal cold. She expressed concern to the Court about the impact of these conditions on Mr. Scott given his age.

91. In response, the Court directed on February 1, 2019 that Mr. Scott receive medical attention to address his requests for renewed antibiotics for the abscess, and x-rays and medical attention to diagnose the numbness in his left arm and hand.

92. On February 4, 2019, Mr. Scott finally was seen by a Nurse Practitioner at the MDC in response to the Court's Order.

93. On Saturday, February 2, 2019, Mr. Scott was locked in his cell all day. "Lunch" was served at 5:30pm.

94. On Sunday, February 3, 2019, power was restored to Mr. Scott's cell. Mr. Scott's unit was then locked-in to their cells for the evening without explanation.

95. On April 30, 2019, Mr. Scott sent an SF 95 form to the BOP, seeking administrative relief for the experiences he suffered during the Conditions Crisis. The BOP acknowledged that it received the form on May 1, 2019. Mr. Scott's administrative relief was denied by the Bureau of Prisons on October 31, 2019.

96. Mr. Scott was released from custody on bail on February 20, 2019.

**VI. The Unconstitutional and Inhumane Conditions of Confinement Experienced by Named Plaintiff Jeremy Cerda During the Conditions Crisis**

97. On Sunday, January 27, 2019, Mr. Cerda woke up and discovered the lights were out in his cell in the West Building of the MDC. In some common areas, there were a few lights, but the cells themselves were completely unlit.

98. Jeremy Cerda is 25 years old. He was born in 1993 in Queens, New York. He lives with his mother and his younger sister.

99. Mr. Cerda grew up in Queens and has a GED. He has worked at different jobs, including retail and as a delivery driver. He has a two-year-old daughter.

100. Mr. Cerda suffers from major depression and anxiety.

101. On January 25, 2019, Mr. Cerda returned to Court to address a potential violation of the terms of a bond. The Court ordered that Mr. Cerda be remanded from the courthouse directly to the MDC for his failure to obtain employment, a condition of his bond.

102. On the afternoon of January 25, 2019, Mr. Cerda was placed in the Intake Unit, Unit 41, at the MDC. He remained on Unit 41 during his entire confinement at the MDC.

103. Prior to his admission to the MDC, on Friday, January 25, 2019, Mr. Cerda had been incarcerated on one prior occasion, for approximately one week at the MDC in 2015.

104. Two days after his January 25, 2019 admission to the MDC, the lights went out. In the following seven days, Mr. Cerda received some natural light in his cell in the daytime, but in the evening and night, his cell was pitch black.

105. At the start of the Conditions Crisis, Mr. Cerda began to feel extremely cold. There was little or no heat in the cell. The cell was freezing due to the sub-zero temperatures outside.



106. On Sunday, January 27, 2019, the high temperature outside was 45 degrees Fahrenheit; the low was 28 degrees.

107. Mr. Cerda's cellmate attempted to cover the air vent of the cell with paper to keep heat in the cell.

108. At the time, Mr. Cerda only had a cotton short-sleeved t-shirt, a cotton short-sleeved jumpsuit, socks, and slide-on shoes. He had four blankets and no sheets: two thinner blankets that were used as bottom sheets to cover the bare mattress (no sheets had been provided to him by the MDC) and two blankets to cover himself with.

109. Mr. Cerda could not purchase any warm clothes or thermals because the commissary was not open.

110. From Monday, January 28, 2019 to Thursday January 31, 2019, the daily high temperatures outside were 39, 43, 35, and 17 degrees, respectively. The daily low temperatures were 23, 23, 7, and 3 degrees.

111. Mr. Cerda received no clean clothes or bedding during the Conditions Crisis.

112. To try to stay warm, Mr. Cerda wrapped himself in two blankets and spent his time either sleeping or lying in bed.

113. Mr. Cerda received no explanation for the failure of the heat and electricity. MDC officers told people on his unit that they did not know when either the heat or light would be back on, and that the outage could last as long as a month.

114. Beginning on Sunday, January 27, 2019, and for approximately seven days, Mr. Cerda was locked in his cell for extended periods. On a few occasions during the next week, Mr. Cerda was allowed out of his cell to sit in a common area for a short period of time.

115. The only contact that Mr. Cerda had with jail staff was when a guard came to give Mr. Cerda his meals.

116. Mr. Cerda ate most of his meals in the cell during this seven-day period, often in the dark so that he was not able to see what he was eating.

117. The meals were served at random and unpredictable times, and often came hours after they were supposed to—breakfast, for example, was served in the afternoon one day.

118. The water that came out of the tap in Mr. Cerda's cell was brown and discolored. Mr. Cerda had to drink the cell water and was not given any other drinking water.

119. The toilet in Mr. Cerda's cell was not functioning properly and could only be flushed intermittently.

120. Other than serving meals and doing the count, Mr. Cerda did not see any jail staff. No one ever came to his cell to check on him.

121. During the Conditions Crisis, Warden Quay walked through the unit with a group of other people. The Unit was still on lockdown, but people were released from their cells during the Warden's tour. Some people were wrapped in blankets as they stood outside their cells during the Warden's tour. The cells were freezing cold and without light.

122. Late in the week, Mr. Cerda saw people protesting in the parking lot outside the jail. Mr. Cerda was happy to see the protestors because he thought that no one on the outside knew what was happening.

123. Mr. Cerda did not have any heat at all in his cell for approximately five days.

124. Mr. Cerda was not permitted or able to communicate with his lawyer or family members between January 27, 2019 and February 3, 2019. He had no access to phone calls or

mail, or to email via the CorrLinks system. Mr. Cerda's mother and lawyer were not able to visit him.

125. On one occasion between January 27, 2019 and February 3, 2019, Mr. Cerda attempted to contact his lawyer on the Federal Defender's dedicated phone, but he could not reach her because she does not work for the Federal Defenders.

126. Mr. Cerda was only permitted to take two showers between January 27, 2019 and February 3, 2019, both of which were cold.

127. Mr. Cerda was disturbed by the constant noise and banging on the unit between January 27, 2019 and February 3, 2019. Other people on the unit were screaming and crying. People were begging the guards to let them out of the lockdown. Some were fainting and experiencing medical problems.

128. On or about February 1, 2019, Mr. Cerda began to think about hurting himself. He could no longer tolerate being locked in the cell for 24 hours a day. He had no idea when the blackout conditions would end. He could not contact anyone and felt scared and alone. Mr. Cerda was worried about his safety.

129. Although Mr. Cerda needed help, he did not receive nor was he offered any mental health treatment at any point between January 27, 2019 and February 3, 2019.

130. On that Friday, February 1, 2019, the high was 22 degrees and the low was 11 degrees.

131. Mr. Cerda did not receive a physical or mental health screening in connection with his admission to the MDC until Friday, February 1, 2019. At that time, he reported to the medical staff that he suffered from depression and anxiety.

132. On Saturday and Sunday, February 2, 2019 and February 3, 2019, the high temperature outside was 34 degrees and 53 degrees, respectively. The lows were 16 and 33 degrees.

133. On April 30, 2019, Mr. Cerda sent an SF 95 form to the BOP, seeking administrative relief for the experiences he suffered during the Conditions Crisis. The BOP acknowledged that it received the form on May 1, 2019. Mr. Cerda's administrative relief was denied by the Bureau of Prisons on October 31, 2019.

134. At Mr. Cerda's next hearing, on February 5, 2019, upon hearing of the conditions at the MDC, the Court stated: "no one deserves to live in these conditions, if even half of what has been represented on the record is accurate."

**VII. The Unconstitutional and Inhumane Conditions of Confinement Experienced by Named Plaintiff Osman Ak During the Conditions Crisis**

135. On Sunday, January 27, 2019, Mr. Ak was working in the kitchen at the MDC when the lights suddenly went out. Prison staff ordered a lockdown of everyone in their cells.

136. Osman Ak is 47 years old. He was born in 1972 in Istanbul, Turkey. He lives with his wife and two children.

137. Mr. Ak grew up in Turkey and has a high school degree. He has previously worked in construction, owned a convenience store, and driven for Uber and Lyft.

138. Mr. Ak first arrived at the MDC on November 16, 2019.

139. After his admission, Mr. Ak was transferred to Unit KOA 819, where he remained until his release from the MDC on July 11, 2019.

140. On January 27, 2019, he was ordered back to his cell in the midst of the power outage.

141. Mr. Ak's clothes consisted of two pairs of pants, two shirts, underwear, and socks.

142. Mr. Ak had only one blanket, which was given to him when he arrived at the MDC.

143. Mr. Ak was never offered or provided additional clothing or blankets.

144. Mr. Ak layered his clothes and wrapped himself in a blanket, but the frigid temperatures made it impossible to stay warm.

145. Beginning on January 27, 2019, Mr. Ak was locked in his cell for 24 hours a day for several days. Eventually, he was permitted to leave his cell to take a shower, but he spent most of his time during the Conditions Crisis locked in his freezing cell.

146. Mr. Ak had no access to hot water during the Conditions Crisis. He could barely bring himself to take a shower because of the cold water, and he was concerned about getting sick.

147. Mr. Ak was immersed in complete darkness throughout the Conditions Crisis.

148. There was no heat in Mr. Ak's cell. Mr. Ak was subject to extremely cold temperatures throughout the Conditions Crisis.

149. Cold wind blew through the bottom of Mr. Ak's cell door throughout the Conditions Crisis. In an attempt to stop this, Mr. Ak covered the crack between the door and the ground with a towel.

150. Mr. Ak was denied access to recreation.

151. Mr. Ak had no access to email, phone calls, or television during the Conditions Crisis.

152. Mr. Ak received meals later than normal mealtimes and the food was often cold. On some occasions, BOP staff did not provide meals.

153. Mr. Ak was unable to purchase food or clothing from the Commissary during the Conditions Crisis.

154. Mr. Ak wore the same clothes for a week. During the Conditions Crisis, he washed his clothes in the sink.

155. Mr. Ak could not communicate with counsel during the Conditions Crisis.

156. Mr. Ak could not communicate with his family during the Conditions Crisis.

157. Without legal or social visits, phone calls, or commissary access, and locked in his cell with no foreseeable end to the situation, Mr. Ak felt stressed.

158. Mr. Ak feared for his safety, thinking that because it was completely dark, anyone could be attacked at any given moment.

159. Mr. Ak observed that there seemed to be little staff on the unit.

160. The living environment on Unit KOA 819 was loud and chaotic. People were banging on their cells in frustration that MDC staff had locked the unit into their cells and that no information was being provided to them about anything.

161. Mr. Ak's cellmate suffered from breathing problems and was eventually transferred out of the West Building during the Conditions Crisis.

162. On Sunday, February 3, 2019, power was restored to Mr. Ak's cell. About an hour later, Mr. Ak was finally able to exit his cell.

#### **VIII. The Unconstitutional and Inhumane Conditions of Confinement Experienced by Named Plaintiff Merudh Patel During the Conditions Crisis**

163. On Sunday, January 27, 2019, Mr. Patel was in the middle of a visit from his fiancée when the lights suddenly went out. Prison guards informed everyone that the visitors had to leave.

164. Merudh Patel is 31 years old. He was born in 1988 in Ahmedabad, India and was raised in New Jersey. He lives with his fiancée.

165. Mr. Patel received his Bachelor of Science in biomedical engineering from the Rutgers University School of Engineering, and has worked in digital media advertising.

166. Mr. Patel first arrived at the MDC on June 1, 2018.

167. After his admission, Mr. Patel was housed in Unit K82, where, apart from 21 days spent in the Special Housing Unit (“SHU”), he remained until he left the MDC.

168. Mr. Patel spent the Conditions Crisis in the SHU. Due to the tinted windows in his cell, Mr. Patel received very little natural light, and spent the subsequent seven days in the dark.

169. Without heat, it became extremely cold in Mr. Patel’s cell for the duration of the blackout. Wind chills exacerbated the cold. When Mr. Patel attempted to cover a gap in his cell’s door with a towel to prevent wind chills, an MDC officer told him that doing so was against the rules and he had to remove the towel.

170. Mr. Patel’s clothing consisted of one shirt, one pair of underwear, and one jumpsuit, which he had received upon entering the SHU.

171. Mr. Patel was never offered or given any extra clothing or blankets.

172. Mr. Patel only had one blanket and one towel.

173. All that Mr. Patel could do to stay warm was use the clothes, blanket, and towel he had been given, and curl up to retain body heat.

174. Beginning on January 27, 2019, Mr. Patel was locked down for 24 hours a day for the next seven days, without leaving his freezing cell a single time. He felt trapped inside his cell.

175. Mr. Patel had no access to email, phone calls, or television during the Conditions Crisis.

176. Throughout the Conditions Crisis, Mr. Patel was served bagged, cold food. Mr. Patel felt very hungry throughout the Conditions Crisis.

177. Mr. Patel was unable to purchase food or clothing from the Commissary during the Conditions Crisis.

178. The ceiling of Mr. Patel's cell leaked cold water on his face and his bed as he slept, leaving his bed soaking wet. He tried wiping away the water on the ceiling with the one towel he had, but it did not help the situation.

179. The shower in Mr. Patel's cell did not have hot water. He took several cold showers, yet he feared getting sick from them.

180. An MDC officer told Mr. Patel that laundry was unavailable, so he was forced to wash his clothes using the shower in his cell.

181. Mr. Patel could not communicate with his family during the Conditions Crisis. When his fiancée attempted to visit him, she was denied.

182. The living environment around Mr. Patel's cell was very noisy. Other people were yelling and banging on their cells' walls to attempt to get MDC officers' attention, who would only come if it became very loud.

183. Mr. Patel felt worried and emotional throughout the Conditions Crisis. In the SHU, he felt ignored and without basic human rights, and he did not know what was going on.

184. On Sunday, February 3, 2019, power was restored to Mr. Patel's cell.

185. Mr. Patel was released from custody on September 9, 2019.



**IX. The Unconstitutional and Inhumane Conditions of Confinement Experienced by Named Plaintiff Gregory Hardy During the Conditions Crisis**

186. On Sunday, January 27, 2019, Mr. Hardy was sleeping in his cell at the MDC when the lights suddenly went out. Jail staff ordered that everyone immediately lock-in to their cells.

187. Gregory Hardy is 45 years old. He was born in 1974 and raised in Kingston, New York.

188. Mr. Hardy has a high school degree. He also has a CDO license from commercial driving school.

189. Mr. Hardy works as a truck driver.

190. Mr. Hardy first arrived at the MDC on June 20, 2018.

191. After his admission, Mr. Hardy was admitted to Unit K82, where he remained until his release from the MDC on July 16, 2019.

192. At the start of the Conditions Crisis, Mr. Hardy began to feel extremely cold. There was little or no heat in the cell. The cell was freezing due to the sub-zero temperatures outside.

193. Mr. Hardy used cardboard to block the cold air coming out of the vents. The MDC officers instructed Mr. Hardy to remove the cardboard.

194. Mr. Hardy's clothes consisted of one sweater, one sweatshirt, two pairs of pants, one pair of long johns, two pairs of underwear, and two pairs of socks.

195. Mr. Hardy was never offered or provided additional clothing or blankets.

196. Mr. Hardy had only one blanket that he was given when he arrived at the MDC.

197. Mr. Hardy wore layers and wrapped himself in a sheet, but the frigid temperatures made it impossible to stay warm.

198. Beginning on January 27, 2019, Mr. Hardy was locked in his cell for 24 hours a day for several days. He was not permitted to leave his cell. He spent most of his time during the Conditions Crisis locked alone in his freezing cell.

199. Mr. Hardy did not have access to a shower during the Conditions Crisis.

200. Mr. Hardy was immersed in complete darkness throughout the Conditions Crisis.

201. Mr. Hardy had no access to email, phone calls, or television during the Conditions Crisis.

202. Mr. Hardy received meals later than the normal mealtimes, and the food was often cold. Some meals were skipped.

203. Mr. Hardy relied on eating food products he had purchased from the Commissary before the Conditions Crisis began.

204. Mr. Hardy was thirsty throughout the Conditions Crisis.

205. The water from the sink in Mr. Hardy's cell was so cold that it sometimes froze over.

206. The toilet in Mr. Hardy's cell was not functioning properly and could only be flushed intermittently. His cell began to smell of urine and feces as a result.

207. Mr. Hardy was unable to purchase food or clothing from the Commissary during the Conditions Crisis.

208. Mr. Hardy wore the same clothes for a week.

209. Mr. Hardy could not communicate with his family during the Conditions Crisis.

210. Mr. Hardy did not have access to legal counsel during the Conditions Crisis.

211. The living environment on Unit K82 was loud and hostile. People were banging on their cells in frustration that MDC staff had locked the unit into their cells and that no information was being provided to them about anything.

212. Mr. Hardy was subject to consistent loud noise.

213. Mr. Hardy observed that there seemed to be few staff on the unit.

214. Without legal or social visits, phone calls, or commissary access, and locked alone in his cell with no foreseeable end to the situation, Mr. Hardy felt depressed and stressed.

215. Mr. Hardy felt claustrophobic in his cell.

216. Mr. Hardy had trouble sleeping during the Conditions Crisis. When he did fall asleep, he suffered from nightmares.

217. Before the blackout, Mr. Hardy had been receiving deliveries of medication, Tamsulosin HCl, for his kidney on a nightly basis.

218. Mr. Hardy's medication was not delivered to him during the Conditions Crisis.

219. As a result of not having access to medication, Mr. Hardy suffered from pain and swollen glands during the Conditions Crisis.

220. Mr. Hardy had trouble breathing during the Conditions Crisis.

221. Mr. Hardy requested medical care relating to these conditions on several occasions during the Conditions Crisis, but his requests were ignored.

222. Mr. Hardy pressed the panic button, but it did not work.

223. On Sunday, February 3, 2019, power was restored to Mr. Hardy's cell. After an hour, Mr. Hardy was permitted to exit his cell.

224. Mr. Hardy did not receive his medication again until two weeks after the Conditions Crisis ended.

225. Mr. Hardy was released from custody on July 16, 2019.

**X. The Unconstitutional and Inhumane Conditions of Confinement Experienced by Named Plaintiff Larry Williams During the Conditions Crisis**

226. On Sunday, January 27, 2019, Mr. Williams was out of his cell sitting in a common area at the MDC when he heard a fire alarm go off and began to smell smoke.

227. Soon after the fire alarms went off, MDC officers ordered everyone in Mr. Williams's unit to return to their cells, and the lights suddenly went out.

228. Larry Williams is 45 years old. He was born in 1974 and raised in New York City.

229. Mr. Williams first arrived at the MDC in 2003. After several transfers in and out of the facility, he returned to the MDC in February 2009, where he stayed until his release on September 18, 2019.

230. During the power outage, Mr. Williams was housed in Unit H53, on the Fifth floor of the MDC.

231. When Mr. Williams was a young boy, his grandmother—who had raised him for most of his childhood—died as a result of severe burns to her body. Mr. Williams was with her in the hospital and remembers seeing her body covered in burns.

232. On January 27, 2019, when Mr. Williams began to smell smoke, hear fire alarms, and see fire trucks outside his window, he began to panic. None of the MDC staff would tell Mr. Williams what was going on. He feared he would die from the fire, as his grandmother had.

233. Once the power went out on January 27, 2019, Mr. Williams's cell began to get very cold. There was no heat in his cell. His cell was entirely made of metal and soon felt like a freezer.

234. Mr. Williams's clothes consisted of one cotton short-sleeved jumpsuit, undershirts, underwear, one long-sleeved shirt, and socks. He had one blanket in his cell.

235. Mr. Williams was never offered or provided additional clothing or blankets.

236. Beginning on January 27, 2019, Mr. Williams was locked in his cell, and only permitted to leave for a few hours each day. By February 1, 2019, Mr. Williams was locked in his freezing cell for 24 hours a day.

237. Mr. Williams worked serving meals at the MDC. Even though there was no power, Mr. Williams was forced to serve meals during part of the Conditions Crisis. Ordinarily, food would be delivered to the fifth floor and then reheated before being served. During the Conditions Crisis, Mr. Williams noticed that meals were being delivered cold to the fifth floor, where they then sat out for some time, becoming even colder. The food Mr. Williams served to other people in his unit during the Conditions Crisis was cold.

238. During the Conditions Crisis, Mr. Williams also noticed that meals were being served on the same carts that were being used to transport garbage.

239. Mr. Williams had little to no access to hot water during the Conditions Crisis.

240. Mr. Williams had no access to laundry or linen exchange during the Conditions Crisis.

241. Mr. Williams was unable to purchase food or clothing from the Commissary during the Conditions Crisis.

242. Mr. Williams had no access to email or phone calls during the Conditions Crisis.

243. Mr. Williams could not communicate with his family during the Conditions Crisis.

244. Mr. Williams did not have access to legal counsel during the Conditions Crisis.

245. Mr. Williams suffers from hyperthyroidism and takes medication for this condition on a daily basis. Mr. Williams ran out of his medication on February 1, 2019. Mr. Williams was unable to refill his medication during the Conditions Crisis.

246. After he ran out of medicine, Mr. Williams began to experience heart palpitations, dizziness, diarrhea, stomach cramps, headaches, and other symptoms of hyperthyroidism.

247. Mr. Williams also felt anxious and had nightmares throughout the Conditions Crisis. The anxiety and nightmares continued for weeks after power was restored.

248. Mr. Williams did not witness any medical help being provided to people in his unit during the Conditions Crisis.

249. Mr. Williams asked for medical attention during the Conditions Crisis, but officers told him that “no one’s there.”

250. Mr. Williams asked to see mental health staff during the Conditions Crisis, but MDC officers ignored his repeated requests and then, towards the end of the week, they told him that no mental health staff were available on weekends.

251. Mr. Williams was not able to see mental health staff until two weeks after the Conditions Crisis ended.

252. Mr. Williams and others on his unit began a hunger strike around February 2, 2019 in order to try to prompt MDC staff to do something about the Conditions Crisis.

253. Mr. Williams observed some of the other people who went on the hunger strike with him be taken to the SHU in response to their participation in the hunger strike.

254. On at least one occasion, Mr. Williams witnessed MDC officers in his unit wearing full riot gear.

255. Mr. Williams was released from custody on September 18, 2019.

256. Mr. Williams is currently a student at St. Francis College in Brooklyn studying for a bachelor's degree in philosophy.

257. Mr. Williams is a 2019-2020 Fellow in Columbia University's Beyond the Bars Fellowship.

**XI. The Common Unconstitutional and Inhumane Conditions of Confinement at the MDC Experienced by the Putative Class Members During the Conditions Crisis**

258. The MDC's West Building has the capacity to house approximately 1,600 people.

259. The horrific conditions were pervasive across the West Building and posed a serious threat to health and safety.

260. During the Conditions Crisis, class members experienced a number of common conditions of confinement at the MDC West Building.

**A. No Light in the Jail's Cells**

261. When the MDC lost all power in one electrical panel, there was no electricity in the cells. Cells had no light and were pitch black by the late afternoon as the only light came from small, obscured cell windows. And even when the sun was up, some cells were completely dark. Common areas such as corridors were irregularly and dimly lighted.

262. Multiple people have reported the same pervasively dark conditions.

263. For example, it was so dark that one person was unable to read his Bible in his cell. Another person, who took many different medications, said that it was too dark to see which pill was which and he was afraid to take the wrong medication or quantity.

**B. Inadequate Heat in the Jail's Cells**

264. During the coldest week of the winter, the MDC did not provide adequate heat to the people confined in the West Building. People were not provided with sufficient additional

blankets or with warm clothes. Frost covered cell windows. People reported suffering from congestion, sore throats, and other medical conditions because of the frigid temperatures.

265. Multiple people have reported on the same, freezing conditions. For example:
- a. One person stated it was so cold in his cell that the water in his drinking cup froze over.
  - b. Even with the weak light coming in through his cell window, another person could see his own breath.
  - c. Some people layered themselves with all of the clothing they had in their cells and wrapped towels around their heads and faces to try to stay warm.
  - d. One person found it too cold and uncomfortable to sleep, even with all his clothes on (including two pairs of socks), two blankets, and a book blocking cold air from the vents in his cell.
  - e. Another person reported that he saw MDC officers bundled up in jackets, hoodies, and hats, but that he didn't have anything to bundle up with. He tried to stay warm by walking around his cell and wrapping his blanket around himself.
  - f. Another person knew that at one point his cell was 30 to 40 degrees because an MDC officer entered his cell, then read and announced the temperature.
  - g. Several people told their attorneys that an MDC officer entered their unit with a hand-held thermometer that read 34 degrees.
  - h. On January 31, 2019, another person awoke to find a layer of ice (approximately  $\frac{1}{8}$ " to  $\frac{1}{4}$ " thick) on the inside of his cell window.
  - i. When people tried to block cold air from entering their cells through the bottom of their door, they were told this was against the institution's rules.



266. Upon information and belief, cooling vents were blowing at high speeds inside some cells, which unavoidably exacerbated the freezing temperatures suffered by people. People in small cells were unable to move out of the path of the fast-moving cold air.

267. People at the MDC are not routinely provided warm clothing. While, ordinarily, people at the MDC may purchase thermal underwear and sweat suits from the commissary, because the computer system that manages commissary accounts was nonoperational due to the power outage, people were unable to purchase warm clothing during the Conditions Crisis.

**C. Other Related Inhumane and Unconstitutional Conditions**

268. The loss of light and heat were compounded by a cascade of related deteriorations in the conditions of confinement during the Conditions Crisis.

269. These related conditions included: complete and near-complete lockdown in cells, limited medical care, infrequent showers and limited hot water, no exercise, no clean laundry, no commissary, no hot meals, no access to counsel, no email, and no family visits.

270. The Individual Defendants and MDC staff failed to recognize the importance of providing information to people detained at the MDC and to external stakeholders, including defense counsel and family members, about the status of conditions in the jail, the status of legal and social visiting, and the reasons for canceling visits.

271. Defendant Quay and MDC staff did not properly communicate information about the blackout and efforts to restore power to the approximately 1,600 men in their custody.

272. MDC management did not effectively address the temperature and medical issues that arose during the Conditions Crisis.

***i. Lockdown in Cells***

273. People were locked in their cells for most of the day and night for the majority of

the Conditions Crisis. People were not allowed to leave their cells for any reason, such as to make phone calls, visit the law library, exercise, or eat meals.

274. People were unable to use unit phones, laundry machines, and computers and could not fulfill commissary orders during the Conditions Crisis.

275. People in the SHU had their one-hour recreation time suspended and were kept in their cells for twenty-four hours a day.

276. People who were not in the SHU were confined to their cells for at least four hours more than usual between January 28, 2019 and January 31, 2019 and were entirely secured in their cells from the afternoon of February 1, 2019 until the evening of February 3, 2019.

*ii. Treatment by Prison Staff*

277. There were widespread reports of poor treatment by prison staff. Prison guards also did not provide information about the Conditions Crisis, or about when the power may return.

278. Examples of the common experience of poor treatment by prison staff include:

- a. Multiple people reported being threatened, ignored, or disciplined when they asked prison staff for information or supplies.
- b. One person reported guards disappearing for hours.
- c. The only written memorandum to incarcerated people was written 6 days into the Conditions Crisis.
- d. People were not informed about any alternative methods for requesting prescriptions in light of the computer system being down.
- e. People reported feelings of despair after being told that the blackout would last weeks.

*iii. No Medical Care*

279. People did not have access to medical staff even for serious medical conditions. They could not fill or refill medical prescriptions or request medical care because the medical computer system was not functioning. People who requested medical care verbally were ignored. People were denied medical appointments and treatment for new and ongoing conditions. People who pressed the emergency buttons in their cells were ignored.

280. Examples of the common experience of lack of medical care include:

- a. Defendant Quay and MDC staff did not ensure that people who use Continuous Positive Airway Pressure (“CPAP”) machines were able to do so during the power outage. Many people with obstructive sleep apnea were unable to use their CPAP machines for six days due to nonoperational cell outlets, making it hard to sleep and causing anxiety. In some cases, their cellmates had to make sure that they did not choke in their sleep. The prior complaints to MDC staff about CPAP usage and electrical outages provided MDC staff with the information necessary to develop a procedure to accommodate people who require the use of CPAP machines during a power outage, but the staff failed to do so.
- b. One person reported being transferred to a cold, dark cell during the Conditions Crisis after being in the Emergency Room for acute pancreatitis, and then not receiving his necessary medical attention, medication, or special diet while in his cell. Upon his transfer back to the MDC, he was also unable to use his CPAP machine.
- c. Another person, who suffers from chronic asthma, required daily use of his oxygen mask and inhaler. Throughout his detention, he was denied his oxygen

mask and had to rely on the two inhalers in his possession when he was arrested. During the Conditions Crisis, the cold, stagnant air caused him serious breathing problems, including coughing and wheezing fits. He felt like he was repeatedly on the verge of an asthma attack and needed to use his inhaler multiple times a day (though it is not intended to be used that frequently). The repeated use of his inhaler then caused chest pains and lightheadedness. He feared that he would faint, and in the darkness of the MDC, staff would not be able to see his collapse.

- d. Several people reported that they were unable to receive refills for their inhalers, and that the Conditions Crisis exacerbated their asthma symptoms, causing at least one asthma attack.
- e. A person who takes two anti-seizure pills a day was down to his last three pills on February 1. He was told that the jail could not provide him with a refill because the electronic system that was needed to do so was down.
- f. Another person with glaucoma had high pressure in his eyes and was seeing flashes, an indication that he needed to go to the hospital immediately. His pleas were ignored. He also had bandages for a gunshot wound that had been unchanged for weeks, and his wound was oozing pus.
- g. Two people suffered seizures during the Conditions Crisis and pressed the emergency button for help, but no one came to aid them. One person fell to the ground and hit his head. Only his cellmate helped him. The panic button was broken, and no prison officers came to help. Another person suffered two seizures and was not given medical assistance, despite his requests.

- h. A person pressed the emergency call button on the morning of February 2, 2019, and an MDC officer simply reset the button without checking on him. The person pressed the button again and was eventually told—much later—that “no medical services are available now.”
- i. A person with high blood pressure requested medical attention and that his medication be refilled at least three times. He ran out of his medication on January 28, 2019 and it was not refilled until February 5, 2019.
- j. When one person requested refills of his insulin shots, an MDC official responded by saying “you’re finished.”
- k. A person felt ill as a result of not receiving his medication. When he pushed the panic button, the MDC officers ignored it, even after he pushed it multiple times. This person stated that later, officers covered the panic button with duct tape, preventing people from calling for help in the event of an emergency.
- l. One person was provided with incorrect medicine that he knew he could not safely take.
- m. One person suffering from anemia reported not receiving his vitamins and fainting as a result.
- n. A person suffered from a serious cardiac emergency on day two of the blackout after he was locked in his cell for two days. When he was finally removed from the unit, he was delayed in accessing needed outside medical care including due to staffing shortages and elevator delays. He then spent five days in the hospital as a result of his cardiac emergency.

- o. Another person also reported not having bandages replaced on a wound, resulting in severe infection and ulceration and later requiring multiple days of hospitalization.
- p. One person did not receive his medicine for sickle cell anemia, resulting in three painful episodes during the Conditions Crisis due to his condition.
- q. One person reported being unable to receive mental health services after hearing voices and feeling depressed and anxious during the Conditions Crisis.
- r. One inmate with a serious psychiatric history of suicide attempts did not receive his mental health medications.
- s. One person reported that after not receiving medication for his mental health symptoms, he swallowed multiple razor blades. After MDC staff repeatedly refused to provide him with medical care, he was eventually taken to a hospital and forced to undergo multiple surgical procedures.
- t. One person fainted due to anxiety, after not receiving medication for his mental health symptoms and having his requests for medical assistance ignored.
- u. Defendants failed to provide numerous people with critically important medications during the Conditions Crisis. Many people who required insulin did not receive it. Many people also did not receive required medications for blood pressure, heart problems, seizures, skin fungus, pain relief, migraines, stomach pain and ulcers, glaucoma, and HIV, as well as for mental health issues, including schizophrenia, bipolar disorder, anxiety, and depression.

*iv. Limited Showers and Hot Water*

281. People were not permitted to shower regularly and there was no or limited hot

water.

282. Multiple people reported the same conditions:
- a. One person said there was “no hot water at all” and he did not shower at all during the Conditions Crisis because “I wasn’t going to take a shower in frozen water. It was already cold in the cell.”
  - b. One person reported that he had “to stink because the shower was freezing cold.”
  - c. One person stated that he had gone without a hot shower from January 26, 2019 to January 31, 2019.
  - d. People complained that the tap water in their cells was cold and brackish. The brown, cloudy water from the tap was not drinkable.
  - e. Another person stated, “the (cold) running water that they do have started running red and brown.”
  - f. A person reported “[l]ittle or no hot water in showers or cells” and the water that was in the cells was “non-potable,” “brown,” and “sewage-type.”

**v. *Poor Cell Conditions***

283. People were left in dysfunctional and unsanitary environments within their cells.

284. Examples of this common experience include:

- a. Cold, dirty water leaked from the ceiling onto people’s beds.
- b. Multiple people reported broken toilets. They could not be flushed for days at a time. Cells began to smell of urine and feces as a result.

**vi. *No Access to Clean Drinking Water***

285. Multiple people reported the faucet in their cell being their only source of water.

Some faucets’ water was reported as brown, dirty, and foul tasting.

286. One person relied on milk delivered with breakfast as his only source of liquid throughout the Conditions Crisis.

287. One person reported that even though he was lactose intolerant, he felt forced to drink milk in order to stay hydrated because he feared that the water was unsafe. This resulted in extreme stomach upset.

**vii. No Clean Laundry**

288. People were not provided with clean clothes or clean bedding. Those unable to purchase thermal clothing from the commissary before the blackout were left wearing the facility's short-sleeve jumpsuit and t-shirts throughout the Conditions Crisis. Examples of this common experience include:

- a. People stated that they had not received clean underwear or socks for a week.
- b. A person had water leaking from the ceiling of his cell onto his bed. His sheets were soaking wet and had not been changed in a week.
- c. One person with an ulcerative colitis flare was forced to sleep on sheets covered in his own blood.
- d. Another person with colitis developed a bleeding rash, and when he showed an MDC officer his dirty underwear to receive a new pair, the officer told him, "It's above my pay grade."

**viii. No Commissary**

289. People could not access the commissary, which was closed because of the limited electricity. For some people, the commissary was not available to them for over a month, since the closure during the Conditions Crisis was during their unit's week to access it.

290. Examples of this common experience include:



- j. People reported to the Federal Defenders that the commissary was closed, and they were therefore unable to buy extra sweatshirts, thermals, or blankets.
- k. Other people had run out of soap, toothpaste, toilet paper, and contact lens solution but were unable to buy them from the commissary.

*ix. No Sufficient, Regularly Scheduled, Warm, or Edible Meals*

291. People received cold or tepid meals at irregular times, often hours later than the normal times. People were often hungry. Sometimes food was restricted to one meal a day. When food did arrive, it was often in inedible condition, having been kept out for many hours before it was served due to the full lockdown. Bagged lunches, such as a bologna sandwich and canned food, were handed out instead of meals.

292. Examples of loss of regular, hot meals include:

- a. On February 2, 2019, one person reported that he did not receive breakfast, received lunch at 4:30 p.m. (the first meal of the day), and received dinner at 8:30 p.m. At approximately 10:20 a.m. that morning, when another person asked an MDC officer when they would receive breakfast, he was told “I don’t need to explain anything” and “You’ll be fed when you’re fed.”
- b. Another person reported irregular meals: breakfast (supposed to be at 6:30 a.m.) was served at 10:00 a.m., lunch (supposed to be at 11:00 a.m.) was served at 5:00 p.m., and dinner was served at 7:30 p.m. and was cold. They were given the same meals for lunch and dinner.
- c. Another person reported that his unit did not receive hot meals during the blackout and instead had bagged lunches with bologna or cheese sandwiches.

- d. One person reported receiving meals with tomatoes, potatoes, and bananas, all foods he could not eat due to his kidney disease.
- e. One person who kept kosher only received canned sardines to eat.
- f. Another person reported that the food was “undercooked and cold” two days in a row, giving him a bad stomach ache.
- g. The people on one unit reported to their attorney on January 31, 2019 (Thursday) that they hadn’t received warm food since the previous Sunday.

x. *No Access to Counsel*

293. People could not contact their lawyers through the normal channels of email (CorrLinks), phone, or mail. Attorney visitation was cancelled. The only functioning phone line was a dedicated line to the Federal Defenders office, which received numerous calls from scared and frantic people during the brief periods they were allowed out of their cells. People were not aware of alternative methods to contact their counsel during the Conditions Crisis.

294. Examples of this common experience include:

- a. On January 29, 2019, one person tried to acquire the form to request a legal telephone call but was told by MDC officers that he would have to wait until Monday (six days later).
- b. Several people had sentencing hearings scheduled the following week and had been unable to speak with their lawyers.
- c. One person reported that while calling the Federal Defenders, an MDC officer told him to hang up the phone. A team of officers then searched his cell and threw his legal mail on the floor.

295. MDC staff did not provide timely and complete information to defense counsel explaining why legal visits were cancelled or when they would be restored. MDC and BOP staff did not acknowledge in their communications with the Federal Defenders that there had been a fire. MDC and BOP staff failed to timely inform defense counsel that legal visits were cancelled. For example, they provided only two-and-a-half hours' notice on January 29, 2019 and only 20 minutes' notice on January 30, 2019.

*xi. No Family Communication*

296. Social visits with family members were suspended.

297. MDC and BOP staff failed to provide family members and the general public with information about conditions in the jail and why social and legal visits had been suspended.

298. For example, one person's family members were "the only people that ma[de him] feel comfortable" in jail, and he would "go about [his] day by talking to them." He found it stressful not to be able to contact them.

299. Another person with diabetes and mental health issues was unable to contact his fiancée during the Conditions Crisis. When their correspondence stopped, she feared he had been sent to the hospital or died.

300. The above commonly brutal conditions, individually and through their mutually reinforcing effects, posed serious harm to the health and safety of all people who were housed at the MDC's West Building during the Conditions Crisis.

**XII. Warden Quay Was Personally Involved in Creating and Maintaining the Unconstitutional Conditions of Confinement**

301. The chaos and misery of the Conditions Crisis was entirely foreseeable.

302. The jail's deteriorating infrastructure was a matter of widespread public knowledge. Warden Quay knew that a power outage was possible at any time.

303. Warden Quay was aware of repeated problems with heat and light at the MDC earlier in January 2019 leading up to the Conditions Crisis.

304. There were ongoing staffing shortages in the facility.

305. Warden Quay knew of the power outage on January 27, 2019. He has averred that “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.”

306. Throughout the Conditions Crisis, Warden Quay has averred, he “continued to assess the operational and security challenges presented by the facility issues on a day-by-day basis.”

307. Warden Quay also testified: “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.”

308. In the face of a crippling crisis at the MDC, and knowing that the situation could not be remedied for at least a week, Warden Quay failed to take any steps to maintain basic living standards for the people in his charge.

309. Warden Quay left more than a thousand men isolated in dark and freezing conditions for nearly a week, with limited access to medical care and hot food and water, without attorney or family visitation, and cut off from access to the CorrLinks telephone and email systems.

310. Warden Quay’s failings were legion:

- a. Warden Quay did not activate an emergency plan that addressed the power outage at the facility. “City Councilman Jumaane Williams said there seemed to be no emergency plan [at the MDC] and ‘no plan to create a plan’ when he and other legislators met prison officials last week.” On information and belief, Warden Quay was directly asked by the correction officers’ Union to activate an emergency plan that would address the power outage and he refused to do so. Warden Quay did not establish an emergency command center.
- b. Warden Quay’s response to the Conditions Crisis was to order people to be confined to their cold, dark cells.
- c. Warden Quay did not move people with sleep apnea who had prescribed CPAP machines for respiratory support to a part of the facility where the electricity was working (e.g., the medical offices or the East Building) or to another BOP facility with working electricity until February 2, 2019, when someone communicated the problem to a member of Congress touring the facility. For six days, these men slept without sufficient oxygen. When later asked why he had not done anything to provide a substitute for this critical medical support, Warden Quay claimed that “no one raised the question.” Two people had previously alerted MDC staff about the dangers for CPAP users of electrical outages during the winter of 2018 when their in-cell electrical outlets were temporarily nonoperational.
- d. Warden Quay did not take steps toward swift resolution of the electrical problems. For example, on Friday February 1, 2019, Representative Nadler announced that he had learned “that contracted electricians had already left, and that power was unlikely to be restored over the weekend.”

- e. Warden Quay did not undertake the most basic steps to ameliorate the harm from the Conditions Crisis:
- i. He did not distribute more blankets, bedding, or warm clothes;
  - ii. He did not obtain temporary supplies to provide electricity and heat, such as emergency generators or portable space heaters for the housing units, but he did obtain such generators and space heaters for certain staff areas;
  - iii. He did not make provisions for people with serious physical or mental illnesses, the elderly, or people with disabilities;
  - iv. He did not provide flashlights or batteries;
  - v. He did not distribute toiletries and wipes;
  - vi. He did not assign mental health staff to the units for rounds;
  - vii. He did not instruct the medical staff to go to the units for rounds;
  - viii. He did not ask medical staff to affirmatively look up which prescriptions needed to be filled and make sure people received required psychiatric and other medications;
  - ix. He did not arrange for legal calls for people with upcoming hearings, trials, or sentencings;
  - x. He did not provide extra food or bottled water;
  - xi. He did not implement a partial or complete evacuation when it became known early in the week that heat and power could not be restored in a reasonable amount of time;
  - xii. He did not transfer people into the empty, more functional jail next door at the East Facility.

311. Warden Quay's failings also forced many MDC staff to work in the same freezing, dark, and dangerous conditions.

312. Warden Quay rejected an offer by New York City to supply emergency generators and emergency blankets. Mayor Bill de Blasio issued a statement on Twitter that the City would send trucks with blankets, hand warmers, and generators "whether they like it or not."

313. Warden Quay systematically and deliberately ignored, or failed to take reasonable measures to address, the visibly deplorable and unconstitutional conditions at the MDC during the Conditions Crisis.

### **XIII. Warden Quay Makes False and Inaccurate Statements About the Conditions Crisis**

314. In addition to his failures to prevent or ameliorate the crisis, Warden Quay prolonged the Conditions Crisis by engaging in deliberate efforts to avoid public scrutiny by misstating facts concerning the severity and nature of the conditions at the MDC.

315. Inexplicably, Warden Quay falsely reported that:

1. "inmates have not been confined to their cells";
2. that "heat is in the high 60s and low 70s";
3. the prisoners were still allowed leisure/recreational activities;
4. the heat has never been impacted and is monitored regularly due to the cold weather;
5. the hot water has not been impacted as it is on the same system as the heat;
6. there are no problems with meals, people are still receiving hot meals;
7. there is no problem with medical treatment; medications are still delivered twice daily;

8. the only issue related to medication is that the computers are not working so prisoners cannot request medication through the computers; and
9. medical treatment still can be requested through the units and also during the twice daily medical runs.

316. The Warden's spokesperson falsely wrote in an email that the power failure had "minimally impacted" the jail's housing units: "All housing units have functional lighting . . . [h]eat and hot water has not been impacted. Likewise, inmate meals are not impacted; inmates are receiving regularly scheduled hot meals each day."

317. On Wednesday, February 6, 2019, the Department of Justice announced that it would investigate the blackout.

318. After touring the MDC with the Warden on February 2, 2019, Representative Nadler criticized the Warden for "an absolute lack of urgency or caring."

319. During this tour, Representative Nadler asked Warden Quay why there wasn't a better plan for a power outage of this sort, why there was not more of a sense of urgency to fix it, and why electricians were not working that day, Warden Quay had no answers.

#### **XIV. Facilities Manager Maffeo Was Personally Involved in Creating and Maintaining the Unconstitutional Conditions of Confinement**

320. The causes of the Conditions Crisis were entirely foreseeable.

321. The jail's deteriorating infrastructure was a matter of widespread public knowledge. Defendant Maffeo knew that a power outage was possible at any time.

322. Defendant Maffeo was aware of repeated problems with heat and light at the MDC earlier in January 2019 leading up to the Conditions Crisis.



323. When the electrical fire occurred on January 27, 2019, Maffeo knew that this would not be an overnight fix, but rather a longer-term issue for the facility. He notified the Warden that the power would be out for multiple days.

324. When elected officials toured the MDC during the Conditions Crisis, New York City Council Member Brad Lander described Maffeo as “openly contemptuous” of the elected officials’ inquiries regarding the conditions inside.

**XV. Facilities Manager Maffeo Makes False and Inaccurate Statements About the Conditions Crisis.**

325. Following the Conditions Crisis, Facilities Manager Maffeo has downplayed the effects of the heating and electrical issues on the people housed in the MDC.

326. Maffeo stated that despite the limited electrical power during the Crisis, the heating system “was largely unaffected. Temperature readings were taken on a daily basis, and consistently were within normal limits. If temperature readings showed that the temperature in an area of the building was outside normal limits, Facilities staff were notified and steps were taken to restore normal heating.”

327. Contrary to those statements, Maffeo has also said that extra blankets were brought to affected units.

***BIVENS CLASS ACTION ALLEGATIONS***

328. All named Plaintiffs bring this action pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) under Rule 23(b)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of a class of all persons similarly situated.

329. Plaintiffs seek to represent a certified Plaintiff class consisting of all persons incarcerated at the MDC’s West Building during the Conditions Crisis (“the *Bivens* Class”).

330. The members of the *Bivens* Class are too numerous to be joined in one action, and

their joinder is impracticable. Upon information and belief, the class exceeds 1,500 individuals.

331. Common questions of law and fact exist as to all *Bivens* Class members and predominate over questions that affect only the individual members. These common questions of fact and law include but are not limited to: (1) whether the conditions of confinement described in this Complaint violate the United States Constitution; (2) what measures Defendants took in response to the Conditions Crisis; (3) whether Defendants implemented an adequate emergency plan during the Conditions Crisis; (4) whether Defendants' practices during the Conditions Crisis exposed people at the MDC to a substantial risk of serious harm; (5) whether Defendants made false public statements about the conditions of confinement at the MDC; (6) whether the Defendants violated the United States Constitution by knowing of and disregarding a substantial risk of serious harm to the safety and health of the *Bivens* Class; (7) what damages should be awarded to redress the harms suffered by the members of the *Bivens* Class as a result of the unconstitutional conditions; and (8) whether punitive damages should be awarded against Defendants for intentional and malicious misconduct.

332. Defendants' practices and the claims alleged in this Complaint are common to all members of the *Bivens* Class.

333. Plaintiffs' claims are typical of those of the *Bivens* Class. Plaintiffs were subjected to the inhumane conditions of confinement at the MDC during the Conditions Crisis.

334. The legal theories on which Plaintiffs rely are the same or similar to those on which all *Bivens* Class members would rely, and the harms suffered by them are typical of those suffered by all the other *Bivens* Class members.

335. Plaintiffs will fairly and adequately protect the interests of the *Bivens* Class. The interests of the *Bivens* Class representatives are consistent with those of the *Bivens* Class

members. In addition, Plaintiffs' counsel are experienced in class action and civil rights litigation.

336. Plaintiffs' counsel know of no conflicts of interest among *Bivens* Class members or between the attorneys and *Bivens* Class members that would affect this litigation.

337. Use of the class action mechanism here is superior to other available methods for the fair and efficient adjudication of the claims and will prevent the imposition of undue financial, administrative, and procedural burdens on the parties and on this Court, which individual litigation of these claims would impose.

338. This class action is superior to any other method for the fair and efficient adjudication of this legal dispute, as joinder of all *Bivens* Class members is impracticable. The damages suffered by members of the *Bivens* Class, although substantial, are small in relation to the extraordinary expense and burden of individual litigation and therefore it is highly impractical for such *Bivens* Class members to attempt individual redress for damages.

339. There will be no extraordinary difficulty in the management of this class action.

#### **FTCA CLASS ACTION ALLEGATIONS**

340. Plaintiffs Scott and Cerda bring this action pursuant to the Federal Tort Claims Act under Rule 23(b)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of a class of all persons similarly situated.

341. Plaintiffs Scott and Cerda seek to represent a certified Plaintiff class consisting of all persons incarcerated at the MDC's West Building during the Conditions Crisis, or alternatively, consisting of all persons incarcerated at the MDC's West Building during the Conditions Crisis who have or will in the future have satisfied the exhaustion requirement imposed by 28 U.S.C. § 2675 ("the FTCA Class").

342. The members of the FTCA Class are too numerous to be joined in one action, and

their joinder is impracticable. Upon information and belief, the class exceeds 1,500 individuals.

343. Common questions of law and fact exist as to all FTCA Class members and predominate over questions that affect only the individual members. These common questions of fact and law include but are not limited to: (1) whether the conditions of confinement described in this Complaint amounts to a tort claim of negligence; (2) what measures Defendants took in response to the Conditions Crisis; (3) whether Defendants implemented an adequate emergency plan during the Conditions Crisis; (4) whether Defendants' practices during the Conditions Crisis exposed people at the MDC to a substantial risk of serious harm; (5) whether Defendants made false public statements about the conditions of confinement at the MDC; (6) whether the Defendants knew of and disregarded a substantial risk of serious harm to the safety and health of the FTCA Class; and (7) what damages should be awarded to redress the harms suffered by the members of the FTCA Class as a result of the conditions.

344. Defendants' practices and the claims alleged in this Complaint are common to all members of the FTCA Class.

345. The claims of Plaintiffs Scott and Cerda are typical of those of the FTCA Class. Plaintiffs Scott and Cerda were subjected to the inhumane conditions of confinement at the MDC during the Conditions Crisis.

346. The legal theories on which Plaintiffs Scott and Cerda rely are the same or similar to those on which all FTCA Class members would rely, and the harms suffered by them are typical of those suffered by all the other FTCA Class members.

347. Plaintiffs Scott and Cerda will fairly and adequately protect the interests of the FTCA Class. The interests of the FTCA Class representatives are consistent with those of the FTCA Class members. In addition, counsel for Plaintiffs Scott and Cerda are experienced in

class action and civil rights litigation.

348. Counsel for Plaintiffs Scott and Cerda know of no conflicts of interest among FTCA Class members or between the attorneys and FTCA Class members that would affect this litigation.

349. Use of the class action mechanism here is superior to other available methods for the fair and efficient adjudication of the claims and will prevent the imposition of undue financial, administrative, and procedural burdens on the parties and on this Court, which individual litigation of these claims would impose.

350. This class action is superior to any other method for the fair and efficient adjudication of this legal dispute, as joinder of all FTCA Class members is impracticable. The damages suffered by members of the FTCA Class, although substantial, are small in relation to the extraordinary expense and burden of individual litigation and therefore it is highly impractical for such FTCA Class members to attempt individual redress for damages.

351. There will be no extraordinary difficulty in the management of this class action.

**FIRST CAUSE OF ACTION**  
(Damages for Violation of the Fifth Amendment)

352. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

353. Plaintiffs bring this claim on their own behalf and on behalf of the Class.

354. Plaintiffs and the Class were forced to live without sufficient heat or light, for over a week, in complete darkness and near-freezing temperatures. These conditions were compounded by related deterioration in other conditions of confinement, including being locked in their cells without access to showers or hot water, without exercise, without clean laundry, without access to the commissary, without medical care, without regular access to hot or edible

meals, without access to counsel, without communication with their families, all of which, alone and in combination, posed an unreasonable risk of serious damage to Plaintiffs' and the Class members' health and physical and mental soundness.

355. For the pretrial detainees, these conditions amounted to unlawful punishment.

356. Defendants Quay and Maffeo were aware or should have been aware of these conditions, which were open and obvious throughout the entire jail.

357. Defendants Quay and Maffeo knew of and disregarded an excessive risk to health and safety.

358. Defendants Quay and Maffeo failed to act with reasonable care to mitigate these risks.

359. Because Defendants Quay and Maffeo failed to act to remedy Plaintiffs' and Class members' degrading and inhuman conditions of confinement in violation of their Fifth Amendment rights, Plaintiffs seek damages pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

360. Because of the unlawful conduct of Defendants Quay and Maffeo, Plaintiffs and Class members have suffered physical injury, pain and suffering, emotional distress, humiliation, embarrassment, and monetary damages.

**SECOND CAUSE OF ACTION**  
(Damages for Violation of the Eighth Amendment)

361. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

362. Plaintiffs bring this claim on behalf of members of the Class who were housed in the MDC after their convictions.

363. Plaintiffs and the Class were forced to live without sufficient heat or light, for

over a week, in complete darkness and near-freezing temperatures. These conditions were compounded by related deterioration in other conditions of confinement, including being locked in their cells without access to showers or hot water, without exercise, without clean laundry, without access to the commissary, without medical care, without regular access to hot or edible meals, without access to counsel, without communication with their families, all of which, alone and in combination, posed an unreasonable risk of serious damage to Plaintiffs' and the Class members' health and physical and mental soundness.

364. Defendants Quay and Maffeo were aware of these conditions, which were open and obvious throughout the entire jail.

365. Defendants Quay and Maffeo knew of and disregarded an excessive risk to health and safety.

366. Defendants Quay and Maffeo intentionally or recklessly failed to act with reasonable care to mitigate these risks.

367. By forcing Plaintiffs and the Class to live in these cruel, unusual, degrading, and inhuman conditions of which Defendant was aware, without legitimate penological purpose, Defendants Quay and Maffeo, acting under color of law and their authority as federal officers, intentionally or recklessly deprived Plaintiffs and Class members of the minimal civilized measures of life's necessities and subjected Plaintiffs to cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

368. Because Defendants Quay and Maffeo were and continued to be deliberately indifferent to Plaintiffs' degrading and inhuman conditions of confinement in violation of their Eighth Amendment rights, Plaintiff seeks damages pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

369. Because of Defendants Quay and Maffeo's unlawful conduct, Plaintiffs and Class members have suffered physical injury, pain and suffering, emotional distress, humiliation, embarrassment, and monetary damages.

**THIRD CAUSE OF ACTION**  
(Damages for Negligence)

370. Plaintiffs Scott and Cerda incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

371. Plaintiffs Scott and Cerda bring this claim on behalf of all members of the FTCA Class who were housed in the MDC during the Conditions Crisis.

372. Plaintiffs Scott and Cerda and the FTCA Class were forced to live without sufficient heat or light for over a week, in complete darkness and near-freezing temperatures. These conditions were compounded by related deterioration in other conditions of confinement, including being locked in their cells without access to showers or hot water, without exercise, without clean laundry, without access to the commissary, without medical care, without regular access to hot or edible meals, without access to counsel, and without communication with their families, all of which, alone and in combination, posed an unreasonable risk of serious damage to Plaintiffs' and the Class members' health and physical and mental soundness.

373. Defendants Quay and Maffeo were aware of these conditions, which were open and obvious throughout the entire jail.

374. At all relevant times pursuant to this Complaint, Defendant United States had a duty to exercise ordinary care to Plaintiffs Scott and Cerda and the FTCA Class.

375. At all relevant times pursuant to this Complaint, Defendant United States failed to uphold this duty to Plaintiffs Scott and Cerda and the FTCA Class, resulting in a humanitarian crisis. The failure to mitigate this excessive risk to health and safety demonstrated a complete



disregard for the humanity of the people suffering throughout the Conditions Crisis and was a result of Defendants' negligent acts and omissions.

376. The actions of Defendants Quay and Maffeo represent a gross deviation from the actions a reasonable individual would have taken in their positions, given their knowledge and employment as Warden and Facilities Manager of the MDC.

377. Defendants Quay and Maffeo were at all times relevant to this Complaint acting within the scope and course of their employment by the Federal Bureau of Prisons, an agency of the United States government.

378. A private employer would otherwise be liable for the negligence of Defendants Quay and Maffeo. The United States is therefore liable for tort claims under the Federal Tort Claims Act.

379. In addition to Plaintiffs Scott and Cerda, more than 90 putative members of the FTCA Class have filed SF 95 forms to date.

380. Because of Defendants' unlawful conduct, Plaintiffs Scott and Cerda and members of the FTCA Class have suffered physical injury, pain and suffering, emotional distress, humiliation, embarrassment, and monetary damages.

WHEREFORE, Plaintiffs Scott, Cerda, Ak, Patel, Hardy, Williams, and the Class members respectfully request that the Court enter a class-wide judgment:

- A. Certifying this suit as a class action;
- B. Awarding reasonable and just compensatory and punitive damages to Plaintiffs and the Class for the injuries they suffered;
- C. Awarding Plaintiffs reasonable attorney's fees pursuant to the Equal Access for Justice Act 28 U.S.C. § 2412; and
- D. Ordering such other and further relief as this Court deems just, proper and equitable.

Dated: New York, New York  
November 15, 2019

EMERY CELLI BRINCKERHOFF  
& ABADY LLP

By: /s/ Katherine R. Rosenfeld  
Katherine R. Rosenfeld  
O. Andrew F. Wilson  
Scout Katovich  
600 Fifth Avenue, 10th Floor  
New York, NY 10020  
(212) 763-5000

CARDOZO CIVIL RIGHTS CLINIC  
Betsy Ginsberg  
Alexander Hunter, *Legal Intern*  
Gabriella Javaheri, *Legal Intern*  
Cardozo Civil Rights Clinic  
Benjamin N. Cardozo School of Law  
55 Fifth Avenue, 11th Floor  
New York, NY 1003  
(212) 790-0871

Alexander R. Reinert  
55 Fifth Avenue, Room 1005  
New York, NY 1003  
(212) 790-0403

*Attorneys for Plaintiffs and the Putative Class*