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*NOT ADMITTED TO THE NEW YORK BAR

April 2, 2020

VIA ECF

Honorable Margo K. Brodie
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*, No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I am pleased to update the Court on the parties' ongoing efforts to address several of the important issues raised in this litigation through mediation.

I. Background

On March 24, 2020, the Court appointed me as a mediator in this case. (ECF No. 42.) I was appointed in order to "facilitate the expeditious adoption of procedures for dealing with ongoing and future emergencies, including the COVID-19 outbreak, and to ensure that the Bureau of Prisons takes all reasonable steps to preserve the statutory and constitutional rights of the inmates at the MDC and their counsel, while maintaining the Bureau of Prisons' ability and authority to manage the facilities in a safe way." (*Id.*) Although not a party to this suit, the Metropolitan Correctional Center

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(“MCC”) agreed to participate in the instant mediation in order to create similar procedures for its facilities.

The following day, I held a joint conference call with both parties and counsel for the MCC, along with their client representatives, to discuss the status of attorney access to inmates at both the MDC and MCC. Following our initial March 25, 2020 discussion, I had subsequent separate conversations with counsel for the Federal Defenders along with their client representatives and similar separate conversations with counsel for the government and representatives of the MDC and MCC.¹ Additionally, information technology specialists at the Bureau of Prisons and the Executive Office for the United States Attorneys also participated in some of these discussions.

My conversations with the Federal Defenders and the Government have focused on the following topics:

1. Existing equipment and strategies at both institutions for facilitating legal video and phone calls between inmates and their attorneys.
2. Technical, logistical, and security limitations on existing video and telephonic equipment at MCC and MDC, especially as they relate to the ongoing COVID-19 pandemic.
3. Potential strategies and equipment that might increase the number of telephone and video calls between inmates at MCC and MDC.
4. The number of in-person legal visits MCC and MDC received before the Bureau of Prisons’ (“BOP’s”) March 13, 2020 COVID-19 Action Plan suspended legal visits.²
5. The number of requests for telephone and video conferences MCC and MDC have received from inmates and attorneys since BOP’s March 13, 2020 suspension of legal visits.
6. The number of telephone and video conferences between inmates and their attorneys that have actually been facilitated since BOP’s March 13, 2020 suspension of legal visits.

My discussions with the parties have been productive. Each side understands the important issues at stake in this litigation and are working in good faith and under difficult circumstances to address these issues. My discussions with BOP and

¹ With Federal Defenders, Inc.: March 27, 2020 and April 2, 2020; with MCC and MDC: March 26, 2020, March 31, 2020, and April 2, 2020.

² Press Release, Federal Bureau of Prisons, Mar. 13, 2020, *available at* https://www.bop.gov/resources/news/20200313_covid-19.jsp.

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DOJ officials exploring options to expand current video conference systems were especially encouraging.

II. Telephonic Contact

As discussed below, while both institutions have worked to establish video conferencing as a means to provide attorney access, the current video options are limited in number. Thus, the primary means of communication continues to be via telephone calls from inmates to counsel. As was outlined at the court conference of March 27, defense counsel currently submit requests for telephone calls to a specific email at each institution with a copy to the institution's counsel and, in the case of many CJA counsel, to Federal Defenders. The requests are then provided to the Unit Managers where the inmates are housed and calls are then placed from within those Units.

An accurate tally of both requests and calls made is necessary to clearly assess the efficacy of the current system. It is my intention to suggest to both parties that I and my staff serve as a neutral collection point for this data, beginning this week. This will allow me to determine the percentage of requested calls that are made as well as identify and have discussions to mitigate challenges within the current system.

III. Video Conferencing

Beginning on Tuesday, March 31, 2020, MCC and MDC began offering video conferencing capability between inmates and defense attorneys. MDC will offer four calls on Tuesdays, four calls on Wednesdays, and two calls on Thursdays. Each MDC call will last thirty minutes to two hours. For its part, MCC will offer four to five inmates calls a day with thirty to sixty minute time slots for each inmate's call. Both institutions will require forty-eight hours' notice from attorneys or inmates before scheduling a video conference.

When requesting video conferences, MDC officials have asked attorneys and inmates to describe the urgency of the need, e.g., imminent court or other deadlines, so that officials can more efficiently allocate this scarce resource. MDC will then rely on these characterizations when evaluating requests for legal video calls without asking further substantive questions about the nature of the proposed legal conference. For MCC's part, I understand that the institution will simply give inmates and attorneys video call slots on a first-come, first-served basis. MCC's expectation, however, is that attorneys and inmates will only request a video legal conference if the conference's objectives cannot be accomplished through other means such as a phone call or a letter.

There are several important limitations on the video conferencing system at MDC. MDC has a single video conferencing station that can be used by inmates to speak with their attorneys. The system is not portable and is hardwired into its current location in the solitary housing unit ("SHU"). In order to contact their attorney using this equipment, non-SHU inmates must be brought to the video system one at a time. According to BOP officials, this creates a bottleneck that prevents MDC from facilitating a larger number of video conferences per week between inmates and their attorneys. I

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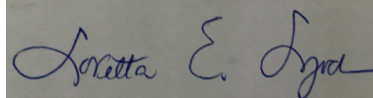
was also informed by MDC officials that in the event an inmate is isolated or his unit is quarantined because of coronavirus, the inmate will not in the ordinary course be housed in the SHU. As a result, such an inmate could not be brought to the SHU for a video call.

There are also important limitations on MCC's video system. Like MDC, MCC only has a single video system available for inmate video conferences. Although MCC's video system is portable, inmates are brought to an attorney visitor room to have legal video conferences. Thus, when a unit is quarantined or an inmate is isolated as a result of coronavirus concerns, affected inmates will not be able to make video legal calls at MCC.

Finally, neither video system at MCC or MDC can accept calls from defense attorneys conferencing in from their home or office internet connections. Instead, lawyers must travel to the attorney lounges at either the Eastern District or Southern District courthouses. Neither system was utilized to full capacity this week, primarily due to quarantine issues and an attorney cancellation.

I have had productive discussions with representatives of the BOP and the Department of Justice about the possibilities of expanding the current video conferencing system in number and allowance of remote access. Those conversations have been helpful in analyzing both the system and security requirements of an expanded system. We are currently exploring hardware options along with system requirements. This effort, while promising, is doubtless a few weeks away from coming into fruition.

Respectfully,

A handwritten signature in blue ink, appearing to read "Loretta E. Lynch", is centered on a grey rectangular background.

Loretta E. Lynch

cc: Sean Hecker, Kaplan, Hecker & Fink
Seth D. Eichenholtz, U.S. Attorney's Office (E.D.N.Y.)
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