



**U.S. Department of Justice
Federal Bureau of Prisons**

*Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106*

January 17, 2020

Austin Evers
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005

FOIA Request Numbers: 2019-02979, 2019-02980 & 2019-02982

Dear Mr. Evers:

This is in response to the above referenced Freedom of Information Act (FOIA) requests.

In response to your requests, staff located 1000 pages of responsive records, which were forwarded to this office for a release determination. After careful review, we determined 67 pages are appropriate for release in full, 160 pages are appropriate for release in part and 773 pages must be withheld in their entirety. Copies of releasable records are attached.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, records were redacted or withheld in full from disclosure to you under the following exemptions:

(b)(5)
(b)(6)
(b)(7)(C)
(b)(7)(F).

An explanation of the FOIA exemptions is attached.

As you are aware, because of the complexity of your requests, the amount of time required to process your requests in their entirety has increased. In an effort to be as responsive to your requests as possible, we are processing the records currently available and will supplement the release as more records become available. Once the final set of records is provided to you, you will receive appeal rights that apply to the entire release, regardless of when the date you receive the records.

Sincerely,

A handwritten signature in black ink, appearing to read "Darrin Howard", is written over a horizontal line.

Darrin Howard
Regional Counsel

Enclosure: 1 CD

Explanation of FOIA Exemptions Used by the Federal Bureau of Prisons

5 U.S.C. § 552(b)(1) protects classified information.

5 U.S.C. § 552(b)(2) concerns matters related solely to internal agency personnel rules or practices.

5 U.S.C. § 552(b)(3) concerns matters specifically exempted from release by statute.

5 U.S.C. § 552(b)(4) concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

5 U.S.C. § 552(b)(5) concerns certain inter- and intra-agency communications protected by the deliberative process privilege, the attorney work-product privilege, and/or the attorney-client privilege.

5 U.S.C. § 552(b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.

5 U.S.C. § 552(b)(7)(A) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

5 U.S.C. § 552(b)(7)(B) concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication.

5 U.S.C. § 552(b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties.

5 U.S.C. § 552(b)(7)(D) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources.

5 U.S.C. § 552(b)(7)(E) concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions.

5 U.S.C. § 552(b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8) concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9) concerns geological and geophysical information and data, including maps, concerning wells.

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

CHARLES J. OGLETREE, JR.
EMERITUS

DIANE L. HOUK
JESSICA CLARKE

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN
MICHELE YANKSON

July 12, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: Administrative Complaint by (b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C) enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

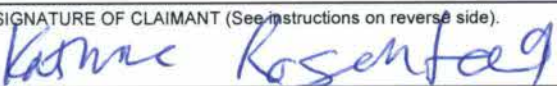
If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. CUSTOM HOUSE, 7TH FLOOR PHILADELPHIA, PA 19106			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) c/o Emery Celli Brickerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, New York 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☐ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)		5. MARITAL STATUS	
6. DATE AND DAY OF ACCIDENT 01/27/2019 02/01/2019		7. TIME (A.M. OR P.M.) A.M.			
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Please see attached.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
CELLMATE #1		UNKNOWN			
(b)(6); (b)(7)(C)					
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY		12c. WRONGFUL DEATH	
1,000,000		1,000,000		12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM 212-763-5066		14. DATE OF SIGNATURE 07/11/2019
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

AMERICAN
OVERSIGHT

2019-02980 2 of 227

JUL 15 2019

DOJ-19-0278, 19-0279, and 19-0280-F-000002

NERO-PHILADELPHIA

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.
C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit 52, Cell b6
b7C
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.
- d. In addition to these facts, I also experienced the following circumstances between January 27, 2019 and February 3, 2019 while I was confined at MDC: sporadic or no consumable meals; curdled milk; and unclean drinking water.

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

uncleanliness caused by lack of access to showers or clean clothing; and emotional and psychological distress.

- b. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3, 2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: cuts to the inside of my eyelid due to not being provided adequate materials to clean and care for my contacts, which resulted in their deterioration. I am unable to see at all without glasses or contacts, and had not been provided glasses, and was therefore only able to use the contacts which were dirty, unsafe, and painful to put in my eyes.

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

07/02/2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, (b)(6); (b)(7)(C) authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely,

(b)(6); (b)(7)(C)

EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

NEW YORK
NY 100
12 JUL '19
PM 4 L

FIRST-CLASS

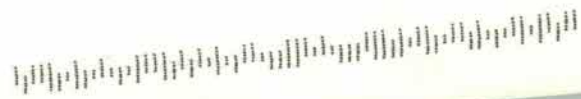


US POSTAGE
\$ 000.65⁰

02 1P
0001202922 JUL 11 2019
MAILED FROM ZIP CODE 10020

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

19106-297999





U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA 19106

March 4, 2019

(b)(6); (b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

RE: Administrative Claim No. TRT-NER-2019-02648
Claim Received February 21, 2019

Dear Mr. (b)(6); (b)(7)(C)

This is in response to your administrative tort claim in which you seek \$100,000.00 in compensation for an alleged personal injury sustained at MDC Brooklyn between January 27, 2019, and February 3, 2019. Specifically, you state a power outage adversely affected the institution's heating, hot water, and lighting. You allege you suffered severe emotional distress, which affected your ability to sleep and focus. You contend you feared for your physical safety and possible assault.

After review, we have decided to deny your claim because you have not alleged an identifiable physical injury actionable under the Federal Tort Claims Act 28 U.S.C. §§ 1346(b)(2), 2672.

If you are dissatisfied with this decision, you may bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,

Darrin Howard
Regional Counsel

cc: H. Quay, Warden, MDC Brooklyn

YAT NEN 2019 02648

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or

1. Article Number

(b)(6)
(b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232



9590 9402 3738 7335 6624 41

2. Article Number (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

Different from item 1? ☐ Yes
Delivery address below: ☒ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☒ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

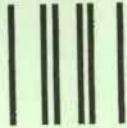
PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

USPS TRACKING #



9590 9402 3738 7335 6624 41



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

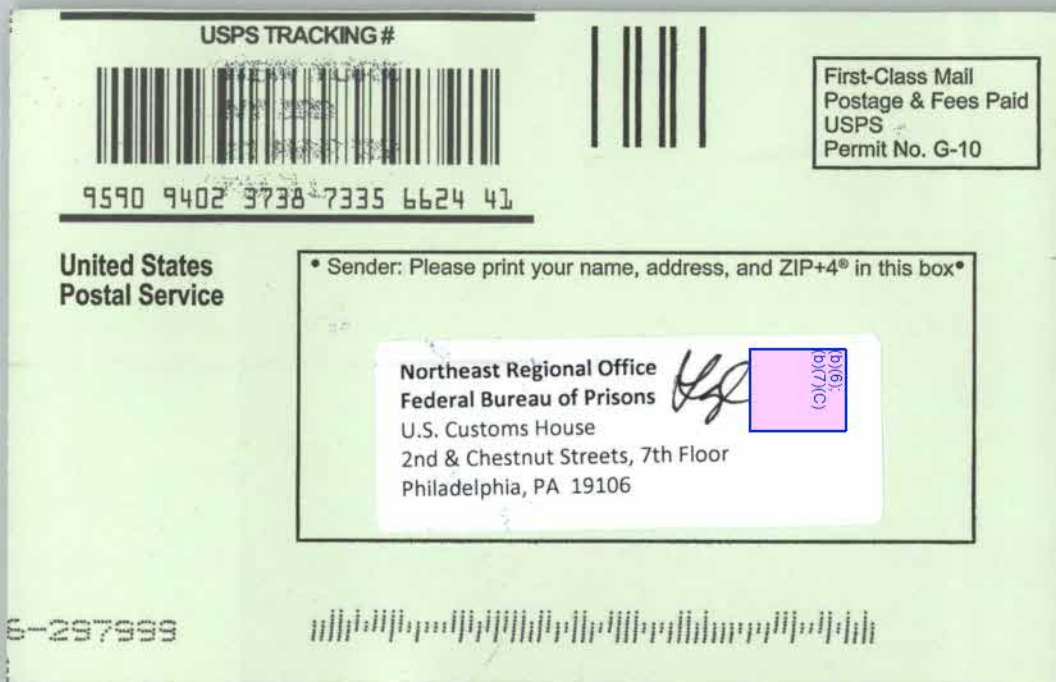
Northeast Regional Office
Federal Bureau of Prisons
U.S. Customs House
2nd & Chestnut Streets, 7th Floor
Philadelphia, PA 19106

[Signature]
[Redacted]
(b)(6)
(b)(7)(C)

YAT NEN 2019 02648

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X (b)(6) (b)(7)(C) ☐ Agent ☐ Addressee B. Received by (Printed Name) (b)(6) (b)(7)(C) C. Date of Delivery ☐ Yes ☒ No RECEIVED MAR 13 2019 NERO-PHI ADELPHIA	
1. Article Number (Transfer from service label) MDC Brooklyn P.O. Box 329002 Brooklyn, NY 11232		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☐ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)	
 9590 9402 3738 7335 6624 41		☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☒ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt



MARCH 11, 2019

DARRIN HOWARD, ESQ.
NORTHEAST REGIONAL COUNSEL
FEDERAL BUREAU OF PRISONS
NORTHEAST REGIONAL OFFICE
200 CHESTNUT STREET -- ROOM 701
PHILADELPHIA, PENNSYLVANIA 19106

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

MAR 13 2019

Re: Administrative Tort Claim No. TRT-NER-2019-02648

Dear Mr. Howard:

NERO-PHILADELPHIA

Claimant submits this letter, pursuant to 28 C.F.R. 14.9(b), seeking reconsideration of the final decision denying the administrative claim for the negligent infliction of emotion distress. Further, Claimant hereby increases his demand for compensatory damages in light of the agency's decision and the physical and psychological injuries Claimant suffered by virtue of staff's negligence. For the reasons set forth hereinafter, reconsideration is both appropriate and warranted, and this claim should be promptly settled.

As a preliminary matter, Claimant initially sought compensatory damages in the amount of \$100,000.00. Claimant hereby increases that demand to \$500,000.00.

By letter dated March 4, 2019, your agency office declined to settle the claim for compensatory damages based on the breach of a duty of care owed to Claim under 18 U.S.C. 4042(a)(2) and (3), which resulted in the negligent infliction of emotional distress. As the sole basis for denying the claim, your office incorrectly concluded that Claim had "not alleged an identifiable physical injury actionable under the Federal Tort Claims Act 28 U.S.C. 1346(b)(2), 2672." (March 4, 2019, Denial Letter at 1). Claimant is neither a convicted prisoner awaiting sentencing, nor a sentenced prisoner. Therefore, your reliance on 28 U.S.C. 1346(b)(2) has been misplaced. Reconsideration is warranted.

"Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401 (b), a claimant...may file a written request with the agency for reconsideration of the denial of a claim..." (28 C.F.R. 14.9(b)) Here, the agency clearly overlooked binding authority holding that claims of "negligent infliction of emotional distress" are cognizable and actionable under the Federal Tort Claims Act. See, e.g., *Mortise v. United States*, 102 F.3d 693, 696 (2d Cir. 1996); and *Lavoie v. United States*, 361 F. App'x 206, 207 (2d Cir. 2010). Consequently, reconsideration must be granted, and Claimant must be afforded compensation for the incomprehensible and irresponsible breach of the duty of care owed him under 18 U.S.C. 4042(a)(2) and (3), which resulted in the negligent infliction of emotional distress.

Respectfully submitted,

(b)(6); (b)(7)(C)

REGISTER NO. (b)(6); (b)(7)(C)
METROPOLITAN DETENTION CENTER
P.O. BOX 329002
BROOKLYN, NEW YORK 11232

(b)(6);
(b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, N.Y. 11232



NEW YORK NY 100

11 MAR 2019 PM 15 L

Darrin Howard, ESQ.
NorthEast Regional Counsel
Federal Bureau of Prisons
200 Chestnut Street - Room 701
Philadelphia, Pennsylvania 19106

19106-297999



DARRIN HOWARD, ESQ.
NORTHEAST REGIONAL COUNSEL
U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
NORTHEAST REGIONAL OFFICE
200 CHESTNUT STREET
PHILADELPHIA, PENNSYLVANIA 19106

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

FEB 21 2019

NERO-PHILADELPHIA

Re: Administrative Tort Claim for Personal Injury [28 U.S.C. 2671, et. seq.]

Dear Mr. Howard:

The undersigned Claimant respectfully submits this claim under the Federal Tort Claims Act ("FTCA") [28 U.S.C. 2672], and 28 C.F.R. 543.30, seeking compensatory damages in the amount of \$100,000.00 for personal injury that he suffered as a result of negligence by Federal Bureau of Prisons staff at the Metropolitan Detention Center ("MDC") in Brooklyn, New York. For the reasons that follow, this claim should be promptly settled.

I. THE RELEVANT FACTS.

At all times between January 27, 2019 and February 3, 2019, claimant was detained at the MDC (West Building). On January 27, 2019, the institution experienced a power outage which, upon information and belief, resulted from an electrical fire. Upon information and belief, the power outage adversely affected the institution's heating, hot water, and lighting. More specifically, each cell (including claimant's assigned cell) was without lights, hot water, or heat for the approximately eight days (i.e. January 27, 2019 thru February 3, 2019). Staff was aware of the inhumane conditions, and took no steps to immediately restore the housing units or the cells within those units to habitable conditions.

Notably, however, on February 3, 2019, staff began distributing extra blankets to inmates in the institution in an effort to combat the exceptionally frigid temperatures. It should also be noted that during this period, institutional staff would visit housing units to check the cell temperatures. Some inmates blocked their ventilation ducts in an effort to prevent the exceptionally cold air from entering their cells through the ventilation system. This, however, also prevented staff from obtaining an accurate electronic reading of the temperature in those cells which had their vents blocked. Thus, on at least two occasions, staff entered the housing unit and presented to a particular cell where the air vent had been blocked, and recorded a temperature reading that was much warmer than the temperature in other cells where inmates had not blocked their air vents.

Throughout the period where claimant was denied suitable quarters, heat, hot water, and lights, he feared for his physical safety. He feared possible assault on his person by other inmates assigned to his housing unit. Despite inadequate lighting in the housing units, from on or about January 28, 2019 thru February 1, 2019, claimant and more than 100 other inmates assigned to his housing unit were permitted (and even required) to exit and remain outside of their respective cells for extended periods of times throughout the day and evening, supervised by only a single staff member who was physically unable to observe inmate activity throughout the unit due to extremely limited lighting in the common area. Claimant was required to exit his cell and enter the common area to obtain and consume his meals, as well as to shower. It should also be noted that during the institutional crisis, mental health staff was inaccessible to claimant and all other inmates assigned to his housing unit. This claimant was also not afforded an opportunity to meet with medical staff. All access to claimant's attorney was denied as attorneys were not permitted to enter the institution, and both the inmate telephone and email systems were not operational. Inmates were also denied a meaningful opportunity to send general correspondence since they were denied access to commissary to purchase required postage.

Again, despite the magnitude of the inhumane crisis, MDC staff took no immediate or appropriate action to restore the institution to normal operations, or to adhere to their responsibility to provide Claimant with appropriate housing.

During this crisis period claimant suffered severe emotional distress which affected, inter alia, claimant's ability to sleep and focus.

II. THE RELEVANT LAW.

(a) Liability Under The Federal Tort Claims Act.

The Federal Tort Claims Act ("FTCA") provides that the United States is liable for injury caused by the negligence

of its employees under circumstances where a private person would be liable according to "the laws of the place where the act or omission occurred," and thus New York law applies. {28 U.S.C. 1346(b); Kane v. United States, 189 F.Supp.2d 40, 51-52 (S.D.N.Y. 2002); Ducrepin v. United States, 964 F.Supp. 659, 663 (E.D.N.Y. 1997)} Under New York law, to prove a claim of negligence, plaintiff must establish three elements: (i) defendant owed plaintiff a duty of care; (ii) defendant breached that duty; and (iii) the breach proximately caused plaintiff's injury. {Kane, 189 F.Supp.2d at 51-52}

(b) The Bureau of Prisons Owed Claimant a Duty of Care.

Although state laws sets out the elements required to prove negligence, the standard of care for the Federal Bureau of Prisons is "fixed by 18 U.S.C. 4042, independent of [any] inconsistent state rule" allowing for a local jailor's immunity from suit, or a lesser duty. {United States v. Muniz, 374 U.S. 150, 164 (1963)} Section 4042(a) requires that the Bureau of Prisons provide "suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States." {18 U.S.C. 4042(a)(2)} This statutory duty means that the Bureau of Prisons must exercise "ordinary diligence" or reasonable care "to keep prisoners safe and free from harm." {Coward v. United States, 617 F.2d 112, 116 (5th Cir. 1980); see also Herrington v. United States, 1984 WL 1279, at *2 (S.D.N.Y. 1984); Castor v. United States, 883 F.Supp. 344, 350 (S.D. Ind. 1995)}

It is clear that "the mere failure to provide suitable quarters" is not actionable; there must be fault. {Muhammed v. United States, 6 F.Supp.2d 582, 595 (N.D. Tex. 1998)} Only "a failure to exercise ordinary care, or reasonable care, to provide suitable quarters" is actionable. {Id.; Graham v. United States, 2002 WL 188573, at *4 (E.D. Pa. 2002)} (noting that mandatory duty of care set forth in Section 4042 "does not dictate the manner in which the duty must be fulfilled")

(c) New York Law Governing Claims Negligent Infliction of Emotional Distress.

Under New York law, a claim of negligent infliction of emotional distress must be premised upon a breach of a duty owed "which either unreasonably endangers the plaintiff's physical safety, or causes the plaintiff to fear for his or her own safety." {Sheila C. v. Povich, 11 A.D.3d 120, 130 (1st Dep't 2004); see also Mortise v. United States, 102 F.3d 693, 696 (2d Cir. 1996)} Under New York law, a plaintiff may establish a claim of negligent infliction of emotion distress in one of two ways: (1) the "bystander" theory; or (2) the "direct duty theory." A plaintiff may recover for purely emotional injury under the "direct duty theory" when he/she suffers an emotional injury from defendant's breach of a duty which unreasonably endangers his/her own physical safety. {See, Mortise, 102 F.3d at 696 (citing Kennedy v. McKesson Co., 58 N.Y.2d 500, 504 (1983))} The duty in such cases must be specific to the plaintiff, and note some amorphous, free-floating duty to society. {Id.; (citing Johnson v. Jamaica Hosp., 62 N.Y.2d 523, 526-27 (1984))}

As noted, the Federal Bureau of Prisons owed claimant a specific duty of care, as described in Section 4042(a)(2) and (3), to provide him "suitable quarters," "safekeeping," and "protection."

III. APPLICATION OF THE LAW TO THE FACTS.

The facts and the law are relatively straightforward: On January 27, 2019, MDC Brooklyn experienced a significant power outage that adversely affected all housing units within its West Building. The outage rendered all cells (including claimant's) within the West Building uninhabitable by virtue of no lighting, heating, or hot water. MDC staff failed to take immediate steps to rectify the power outage or to restore the institutional to normal operations, as a result of being left in such inhumane and exceptionally dangerous conditions, claimant feared for his personal safety and life.

It goes without saying that the Federal Bureau of Prisons, in keeping with its mandated duty under Section 4042(a)(2) and (3), is required to provide "adequate heat" to all cells and housing units wherein prisoners will be confined. {See, Dugan v. Washington, 2001 WL 741626, at *5 (N.D. Ill. June 11, 2001)} (noting that prisoners need only be provided "adequate heat") That duty is specific. The duty to provide "safekeeping" and "protection" is also specific. {See, 18 U.S.C. 4042 (a)(2) and (3)} Each of those specific duties were breached when MDC staff failed to take steps to immediately rectify the power outage, resulting in approximately eight continuous days of fear of physical injury.

Bureau of Prisons employee's negligence in this matter is both inexplicable and unacceptable. Indeed, the failure to act reasonably has prompted investigations from the Office of the Inspectors General, as well as others. Given the indisputable facts, and well settled law, claimant is entitled to compensatory damages in the amount of \$100,000.00.

IV. CONCLUSION.

For the reasons stated, claimant seeks prompt disposition and settlement of this claim.

Dated: Brooklyn, New York

February 15, 2019

Respectfully submitted,

(b)(6); (b)(7)(C)

[SIGNATURE]

(b)(6); (b)(7)(C)

[PRINT NAME]

(b)(6); (b)(7)(C)

[REGISTER NUMBER]

METROPOLITAN DETENTION CENTER
P.O. BOX 329002
BROOKLYN, NEW YORK 11232

-- CLAIMANT --

cc: U.S. Department of Justice
Office of the Inspector General

Federal Bureau of Prisons
Central Office
320 First Street, NW
Washington, DC 20534

New York Times (w/ecnl.)

New York Federal Defenders

(b)(6);
(b)(7)(C)

MDC Brooklyn
Metropolitan Detention Center
P.O. Box 329002
Brooklyn, N.Y. 11232

NEW YORK NY 100
19 FEB 2019 PM 3 L



Darrin Howard, Esq.
North East Regional Counsel
U.S. Department of Justice
Federal Bureau of Prisons
North East Regional Office
200 Chestnut Street
Philadelphia, Pennsylvania 19106

19106-297999





U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office

*U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA. 19106*

March 21, 2019

(b)(6); (b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

Re: Administrative Claim Reconsideration Received March 13, 2019
Claim No. TRT-NER-2019-02648

Dear Mr. (b)(6); (b)(7)(C)

This will acknowledge receipt of your administrative claim reconsideration request for an alleged loss of personal property or personal injury suffered at MDC Brooklyn.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim.

All correspondence regarding this claim should be addressed to Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Street, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact this office immediately. Also, should your address change, you should advise this office accordingly.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA 19106

September 12, 2019

Mr. (b)(6); (b)(7)(C)
MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

RE: Administrative Claim No. TRT-NER-2019-02648
Reconsideration
Claim Received March 13, 2019

Dear Mr. (b)(6); (b)(7)(C)

Your request for reconsideration of Administrative Claim No. TRT-NER-2019-02648 was properly received on March 13, 2019, and reconsidered for settlement as provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2672, under authority delegated to me by 28 C.F.R. § 543.30. You seek \$500,000.00 in compensation for an alleged personal injury sustained at MDC Brooklyn between January 27, 2019, and February 3, 2019. Specifically, you state a power outage adversely affected the institution's heating, hot water, and lighting. You allege you suffered severe emotional distress, which affected your ability to sleep and focus. You contend you feared for your personal safety.

A careful review of the reconsideration shows you have not submitted any new evidence in support of the allegations made in your administrative claim. A review of your medical records does not reflect you sought medical care from Health Services for any ailments associated with the power outage. There is no evidence you experienced a compensable loss as the result of negligence on the part of any Bureau of Prisons employee. Accordingly, your claim is denied.

If you are dissatisfied with this decision, you may bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,

Darrin Howard
Regional Counsel

cc: D. Edge, Warden, MDC Brooklyn

AMERICAN
OVERSIGHT

2019-02980 20 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000020

TURNER 2019 02648

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. [REDACTED]
MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

(b)(6); (b)(7)(C)

2. Article Number (Transfer from service label)

7016 1370 0001 4120 0782

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

Address different from item 1? ☐ Yes
Delivery address below: ☒ No

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3849, July 2013 PSN 7530-02-000-9053

Domestic Return Receipt



EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK
JESSICA CLARKE

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN

August 20, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: Administrative Complaint by (b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C) enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

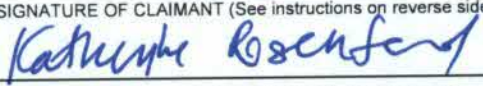
If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. CUSTOM HOUSE, 7TH FLOOR PHILADELPHIA, PA 19106			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) c/o Emery Celli Brickerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, New York 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 01/27/2019 02/03/2019	
7. TIME (A.M. OR P.M.) A.M.					
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). 					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). 					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. 					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
CELLMATE #1		UNKNOWN			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 1,000,000		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM 212-763-5066		14. DATE OF SIGNATURE 8/20/19
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both, not exceeding 10 years, 1001.) DATE RECEIVED FEDERAL BUREAU OF PRISONS REGIONAL COUNSEL OFFICE		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

AUG 23 2019

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

AMERICAN
OVERSIGHT

2019-02980 24 of 227

NERO-PHILADELPHIA

DOJ-19-0278, 19-0279, and 19-0280-F-000024

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit K-82, Cell b7C
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.
- d. In addition to these facts, I also experienced the following circumstances between January 27, 2019 and February 3, 2019 while I was confined at MDC: sporadic or no access to prescribed medication, resulting in severe distress and pain; and dirty and brown drinking water without any provided alternatives for drinking.

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

to noxious odor, air quality, and excessive noise; severe personal uncleanliness caused by lack of access to showers or clean clothing; and emotional and psychological distress.

- b. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3, 2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: a head injury, sustained during one night of the blackout. I was in my cell, in the bottom bunk when I tried to get out to use the bathroom, and hit my head on the bunk because of the absolute darkness. When I tried to get medical help, none ever came. I was also unable to refill my prescription for high blood pressure, which caused me to feel sick and dizzy, gave me intense headaches and caused my fingers to swell.

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

7/23/19

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, (b)(6); (b)(7)(C) authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

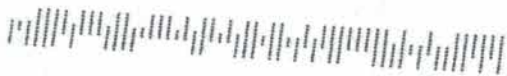
Sincerely,

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

D.O.B:



AMERICAN
OVERSIGHT



EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

2019-02980 29 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000029



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

*U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106*

September 10, 2019

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

Re: Administrative Tort Claim Received August 23, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-06457

Dear Ms. Rosenfeld:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn between January 27, 2019, and February 3, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA 19106

September 18, 2019

Mr. (b)(6); (b)(7)(C)
FTC Oklahoma City
P.O. Box 898801
Oklahoma City, OK 73189

RE: Administrative Claim No. TRT-NER-2019-03280

Dear Mr. (b)(6); (b)(7)(C)

This is in response to your administrative tort claim in which you seek \$50,000.00 for an alleged personal injury sustained at MDC Brooklyn between January 27, 2019, and February 3, 2019. Specifically, you state a power outage adversely affected the institution's heating, hot water, meal service and lighting. You allege your physical and mental health were seriously threatened, which affected your positivity and ability to focus.

After review, we have decided to deny your claim because you have not alleged an identifiable physical injury actionable under the Federal Tort Claims Act 28 U.S.C. §§ 1346(b)(2), 2672.

If you are dissatisfied with this decision, you may bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,

Darrin Howard
Regional Counsel

cc: D. Edge, Warden, MDC Brooklyn

TURNER 2019 03280

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X ☐ Agent ☐ Addressee	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
2. Article Addressed to:		D. Is delivery address different from item 1? ☐ Yes ☒ No If Yes, enter delivery address below:	
Mr. [REDACTED] FTC Oklahoma City P.O. Box 898801 Oklahoma City, OK 73189		☐ Adult Signature ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☒ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
7016 1370 0001 4119 4562		Domestic Return Receipt	

PS Form 3811, July 2015 PSN 7530-02-000-9053

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House - 7th Floor
2nd and Chestnut Street
Philadelphia, PA 19106
Official Business

(b)(6); (b)(7)(C)

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS TOLD AT DOTTED LINE

CERTIFIED MAIL®

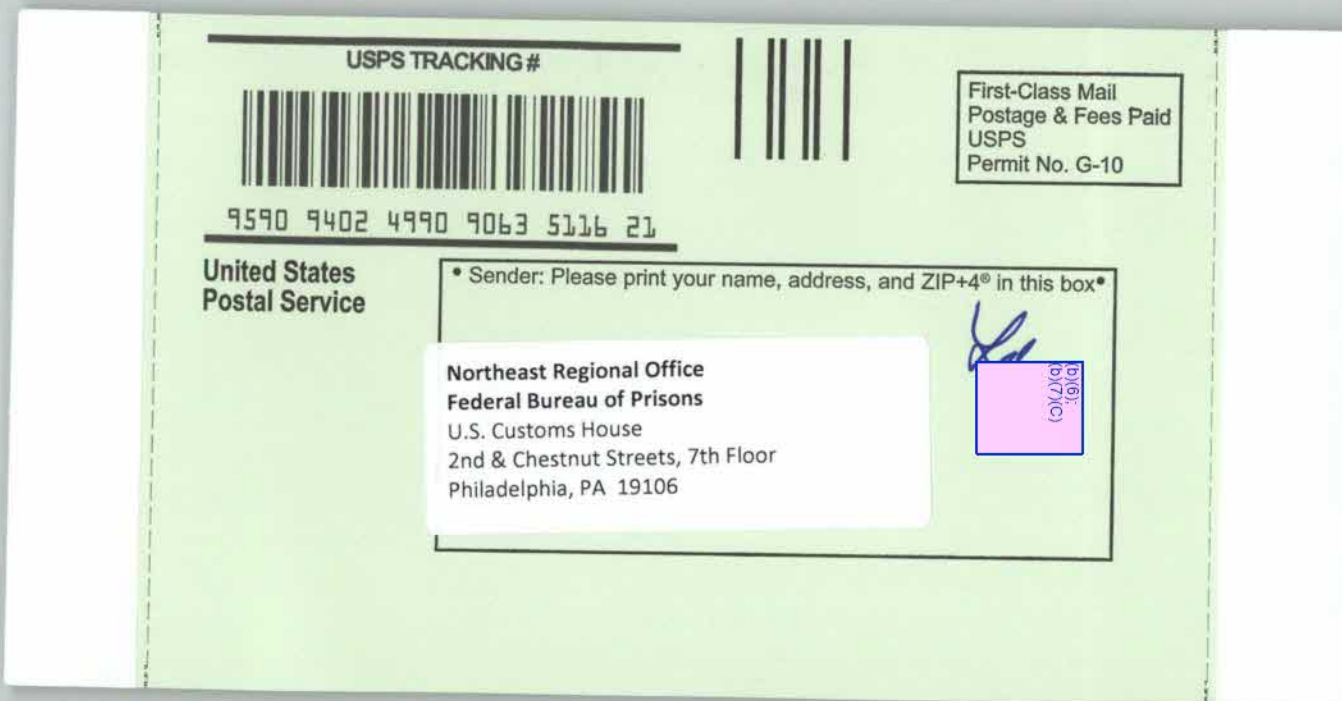


7016 1370 0001 4119 4562

dep.

(b)(6);
(b)(7)(C)

FTC Oklahoma City
P.O. Box 898801
Oklahoma City, OK 73189



3/8/19 RV 1253 PM

BP-A0943 Small Claims for Property Damage or Loss (31 U.S.C. § 3723) CDFRM

MAY 09

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

1. Location where the property loss or damage occurred:

MDC Brooklyn

2. Name, address of claimant (Register number, street, city, state, and zip code):

Brooklyn N.Y. 11232 P.O. Box 329002
Metropolitan Detention Center

3. Date and Day of Incident:

January 17, 2019 to February 3, 2019

4. Time: (A.M. or P.M.):

A.M. thru P.M.

5. Basis of Claim (State in detail the known facts and circumstances of the damage to, or loss, of privately owned property, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages, if necessary.):

See additional Page for Basis of claim

I was given this form to place a claim for
Personnel injury by staff.

6. Witnesses (Please provide the name and address (number, street, city, state, and zip code of each witness)):

Warden Herman Quay

7. Amount of Claim for Damage to, or loss of, privately owned property (in dollars) (Sum Certain Amount - Total Amount Of Claim):

50,000

8. MAIL OR DELIVER CLAIM TO THE REGIONAL OFFICE WHERE THE CLAIM OCCURRED

I CERTIFY THAT THE AMOUNT OF THE CLAIM COVERS ONLY DAMAGE TO, OR LOSS OF PRIVATELY OWNED PROPERTY CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

9. Signature of Claimant or Authorized Representative (b)(6); (b)(7)(C)

10. Date

3/8/19

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

MAR 19 2019

PDF

Prescribed by PS 1320

NERO-PHILADELPHIA

AMERICAN
OVERSIGHT

2019-02980 35 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000035

From January 27, 2019 to February 3, 2019 MDC was plunged into darkness and ("the conditions crisis") I (b)(6); (b)(7)(C) and more than a thousand other inmates at MDC were subjected to unconstitutional and Inhumane Conditions. Warden Quay was warned of Systemic problems here in "MDC" before the conditions crisis, he had notice of these horrific conditions during the crisis, and failed to remedy them. Warden Quay knew what was coming. MDC's problems were wide spread and well known.

In addition to general concern Warden Quay was aware of specific warning signs concerning the jail's electricity and heat during the weeks leading up to the conditions. There were three blackouts in January 2019 before the condition crisis during which MDC lost power for a few days. MDC management and staff informed Warden Quay that the west building had experienced a partial power outage and was operating on emergency lighting.

The facilities staff informed him that the power outage would not be repaired until the next day. On January 27, 2019 the power went out. On the next day it became noticeably colder in my cell. Some staff wore coats, hats, and scarfs over their uniforms while I was only in my cotton jumper and T-shirt with boxers on. I was ~~later~~ left in the dark and forced to endure the freezing cold that was describe on the radio as a Polar Vortex. I also had to eat meals that were cold and I had to eat in total darkness. I was told that it could take several weeks or a month for the power to come

to try and stay warm. I was forced to take cold showers and wear the same clothes for a week. I was not able to receive counsel visits or call my lawyer or family. The living environment was loud and hostile. People were banging on their cells in frustration because staff had not informed us of what was going on. I suffer from major depression and bipolar disorder and I was having a hard time try to stay positive and focused. My meals ~~was~~ were cold my toilet didn't work. My medication was not given to me because I am in SHU and the elevators were not working so no one came up. The emergency buttons in SHU do not work even when the power is on so I could the officers that I need to speak to PYSCH @ so I can have my meds. I feel that my mental and physical health were a serious threat, not to mention my safety. Warden Quay was informed of these conditions and did nothing to improve them. I bring this claim on behalf of my self. I was forced to live without sufficient heat or light for ~~a~~ over a week in complete darkness and near-freezing temperatures. I am asking to be awarded reasonable and just compensatory and punitive damages for the injuries I suffered.

(b)(6); (b)(7)(C)

(b)(6);
(b)(7)(C)

Metropolitan Detention Center

Brooklyn, N.Y. 11232
P.O. Box 329002

NEW YORK NY 100

15 MAR 2019 PM 4 L



U.S. Department of Justice
Federal Bureau of Prisons
North East Regional Office
U.S. Customs House - 7th floor
2nd and Chestnut Street
Philadelphia, PA 19106



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

*U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106*

April 1, 2019

(b)(6); (b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

Re: Administrative Claim **Received March 19, 2019**
Claim No. TRT-NER-2019-03280

Dear Mr. (b)(6); (b)(7)(C)

This will acknowledge receipt of your administrative claim for an alleged loss of personal property or personal injury suffered at MDC Brooklyn.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim.

All correspondence regarding this claim should be addressed to Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Street, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact this office immediately. Also, should your address change, you should contact this office in writing accordingly.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

To Whom it may concern,

My name is [REDACTED] and my Claim # is
TIRT-NEP-2019-03250! I'm writing you to inform
you of my address change. The new address is as follows.
United State Penitentiary Big Sandy
P.O. Box 2068
Inez, Ky 41224

Thank you for take the time out to Read
this brief letter

[REDACTED]

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

AUG 19 2019

NERO-PHILADELPHIA

(b)(6);
(b)(7)(C)

United States
D.C. Sup Ct
Inez, KY 41224



CHARLESTON WV 250

13 AUG 2019 PM 11

Northeast Regional Office
US Custom House
2nd & Chestnut Street 7th Floor
Philadelphia, PA 19106

19106-290776



EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK
JESSICA CLARKE

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN

July 26, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: *Administrative Complaint by* (b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C) enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

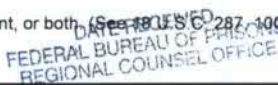
If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. CUSTOM HOUSE, 7TH FLOOR PHILADELPHIA, PA 19106			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse), Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) c/o Emery Celli Brickerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, New York 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 01/27/2019 02/01/2019	
7. TIME (A.M. OR P.M.) A.M.					
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). 					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). 					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. 					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
CELLMATE #1		UNKNOWN			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 1,000,000		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM 212-763-5066		14. DATE OF SIGNATURE 7/27/19
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287-1001.)  FEDERAL BUREAU OF PRISONS REGIONAL COUNSEL OFFICE		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

AMERICAN
OVERSIGHT

2019-02980 43 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000043

AUG 01 2019
NERO-PHILADELPHIA

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit 42G, Cell 106.
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness caused by lack of access to showers or clean clothing; and emotional and psychological distress.
- b. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3,

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: increased symptoms related to Post Traumatic Stress Disorder, including severe and debilitating anxiety and depression. As a result of my pre-existing PTSD, relating to my time as a Marine, I was unable to sleep and had difficulty eating and functioning on a daily basis. My increased symptoms did not abate after the power was restored.

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

7 / 15 / 19

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

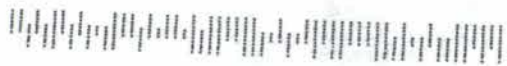
I, (b)(6); (b)(7)(C), authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely,

(b)(6); (b)(7)(C)

D.O.B: (b)(6); (b)(7)(C)



AMERICAN
OVERSIGHT

EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

FIRST-CLASS



US POSTAGE

\$ 000.65⁰

02 1P

0001202922

JUL 30 2019

MAILED FROM ZIP CODE 10020

2019-02980 48 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000048





U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

*U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106*

August 12, 2019

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

Re: Administrative Tort Claim Received August 1, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-05855

Dear Ms. Rosenfeld:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C), for an alleged personal injury suffered at MDC Brooklyn between January 27, 2019, and February 1, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

2/3/19

BP-A0943 Small Claims for Property Damage or Loss (31 U.S.C. § 3723)

MAR 18

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

1. Location where the property loss or damage occurred:

MDC Brooklyn
P.O. Box 329002
Brooklyn NY 11232

2. Name, address of claimant (Register number, street, city, state, and zip code):

NAME: (b)(6); (b)(7)(C)
REG#: (b)(6); (b)(7)(C)
MDC BROOKLYN
P.O. BOX 329002
BROOKLYN, NY 11232

3. Date and Day of Incident:

January 27th - February 3rd

4. Time: (A.M. or P.M.):

All Relevant times

5. Basis of Claim (State in detail the known facts and circumstances of the damage to, or loss, of privately owned property, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages, if necessary.):

From January 27th 2019 until February 3rd 2019. I was without regular time for shower, laundry, exercise, communication with media family and my lawyer and also during this time the food was often hours late and cold. And there was no heat or light. As a result due to my mental anguish and physical stress I am requesting financial compensation and sentence reduction.

6. Witnesses (Please provide the name and address (number, street, city, state, and zip code) of each witness)

BK, NY 11232

BK, NY 11232

BK, NY 11232

MDC Brooklyn P.O. Box 329002

MDC Brooklyn P.O. Box 329002

MDC Brooklyn, P.O. Box 329002

MDC Brooklyn P.O. Box 329002 Brooklyn, NY 11232

7. Amount of Claim for Damage to, or loss of, privately owned property (in dollars) (Sum Certain Amount - Total Amount Of Claim):

\$250,000

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

APR 08 2019

8. MAIL OR DELIVER CLAIM TO THE REGIONAL OFFICE WHERE THE CLAIM OCCURRED

NEO-PHILADELPHIA

I CERTIFY THAT THE AMOUNT OF THE CLAIM COVERS ONLY DAMAGE TO, OR LOSS OF PRIVATELY OWNED PROPERTY CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

9. Signature of Claimant or Authorized Representative

(b)(6); (b)(7)(C)

10. Date

4/4/19

PDF

Prescribed by PS 5580

Northeast Regional Office (BOP)
US Custom House

2nd & Chestnut Street 7th Floor

Philadelphia, PA 19106
DOJ-19-0278, 19-0279, and 19-0280-F-000050

AMERICAN
OVERSIGHT

2019-02980 50 of 227

b(6);
b(7)(C)

YORK, NY 100



MDC Brooklyn
Metropolitan Dentition Center
P.O. Box 329002
Brooklyn, N.Y. 11232

North East Regional Office (Bop)
US Custom House
2nd and Chestnut Street 7th Floor
Philadelphia, PA 19106

19106-280801



METROPOLITAN DETENTION CENTER
80 29TH ST, BROOKLYN, NY 11232

The enclosed letter was processed through
mail procedures for forwarding to you.

The letter has neither been opened nor inspected.

If the writer raises a question or a problem over
which this facility has jurisdiction, you may wish
to return the material for further information
or clarification. If the writer encloses correspondence
for forwarding to another addressee, please
return the enclosure to the above address.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse), Number, Street, City, State and Zip code. 		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN	4. DATE OF BIRTH 12/29/86	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT January 21 st - February 3 rd 2019	7. TIME (A.M. OR P.M.) All time throughout day.	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). my inmate right to be has been neglected. I'm requesting financial compensation of \$250,000 from January 21 st until February 3 rd 2019 I was without regular time for showers, laundry, exercise, communication with media family and my lawyer also during this time the food was often late and cold and there was no heat or light. I am requesting financial compensation and sentence reduction.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Do to the right that was neglected, I've been stressed, non trusting of the BOP and daily I fear for my safety, and well being.					
11. WITNESSES					
NAME 		ADDRESS (Number, Street, City, State, and Zip Code) M.D.C. Brooklyn Metropolitan Detention Center P.O. Box 329002 Brooklyn NY 11232			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE 0	12b. PERSONAL INJURY \$250,000	12c. WRONGFUL DEATH 0	12d. TOTAL (Failure to specify may cause forfeiture of your rights). \$250,000		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM	14. DATE OF SIGNATURE 4/23/19	
PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.) DATE RECEIVED FEDERAL BUREAU OF PRISONS REGIONAL COUNSEL OFFICE		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

APR 26 2019

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

AMERICAN
OVERSIGHT

2019-02980 53 of 227

NERO-PHILADELPHIA

DOJ-19-0278, 19-0279, and 19-0280-F-000053

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

4/3/19 (b)(6); (b)(7)(C)

BRO-1330.13E

INMATE REQUEST FOR INFORMAL RESOLUTION

NAME (b)(6); (b)(7)(C) REG. NO. 85834-054 UNIT: 71

Specific Issue Needing Resolution: My Inmate's right 1-8 has been neglected. I'm requesting Financial compensation of \$250,000

Explain, in detail the issue: From January 27th until February 3rd 2019 I was without regular time for showers, Laundry, exercise, communication with media, family, and my lawyer also during this time the food was often hours late and cold. And there was no heat or lights. I am requesting Financial compensation and sentence reduction.

Inmate Signature Jesse Heckerich Date 4/3/19

TO BE COMPLETED BY COUNSELOR

Date Received: 4/4/19

Action taken: See attached response and Application for Federal Tort Claim

COUNSELOR SIGNATURE (b)(6); (b)(7)(C) DATE 4/4/19

TO BE COMPLETED BY UNIT MANAGER

Informal Resolution Received: _____

Unit Manager Signature (b)(6); (b)(7)(C) Date: 4-8-19

Extension Granted: _____ Date Due: _____

Reason for Extension: _____

UNIT MANAGER APPROVAL: _____ DATE: _____

Response to Inmate Request to Informal Resolution

Name: HERNANDEZ, JOSE #85834-054

This is in response to your Inmate Request for Informal Resolution dated 04/03/2019: You state in your BP8 Inmate's right 1 – 8 has been neglected and you are requesting financial compensation. You go on to list more than one issue to describe the details. Upon investigation, it has been determined that these issues appear to have been resolved for you since you did not email any further complaints to staff regarding them.

You state that you would like financial compensation. Your request for financial compensation cannot be resolved through the Administrative Remedy Process.

Pursuant to the Federal Tort Claims Act, a claim for money damages for personal injury or death and/or damage to or loss of property must be filed against the United States by the injured party with the appropriate Federal agency for administrative action.

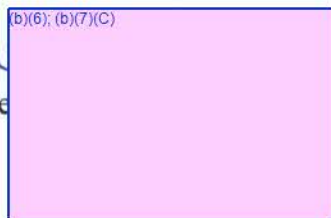
Please see attached Standard Form 95 (Claim For Damage, Injury, or Death) if you wish to submit a Federal Tort Claim. You may send your claim to the following address:

Regional Counsel's Office
Federal Bureau of Prisons - NERO
U.S. Custom House
2nd & Chestnut Street - 7th Floor
Philadelphia, PA 19106

As for the time reduction in your sentence, you need to consult with an attorney or notify the courts directly in order to pursue this avenue.

Counselor Signature

(b)(6); (b)(7)(C)



Date:

4/4/17

(b)(6);
(b)(7)(C)

MD C Brooklyn
metropolitan Detention center
P.O. Box 329002
Brooklyn NY 11232

NEW YORK NY 100

24 APR 2013 PM 151



Regional counsels office
Federal Bureau of Prisons - NERO
U.S. Custom House
2nd and Chestnut street - 7th floor
Philadelphia, PA 19106

1910632579 0035



U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House - 7th Floor
2nd and Chestnut Street
Philadelphia, PA 19106
Official Business

(b)(6), (b)(7)(C)

PK
Do not
March?

PHILADELPHIA
PA 191
18 APR '19
PM 5 L

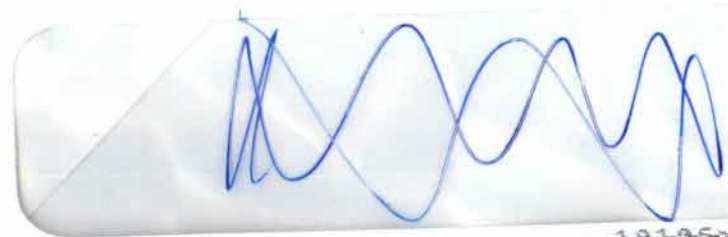


UNITED STATES POSTAGE
PITNEY BOWES
\$ 000.50⁰
02 1P
0001126544
APR 18 2019
MAILED FROM ZIP CODE 19106

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

MAY 9 2019

NERO-PHILADELPHIA



11232-9002028

NIXIE 076 DE 1 0005/06/19
RETURN TO SENDER
NO SUCH STREET
UNABLE TO FORWARD
BC: 19106280811 *2597-10319-18-43



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

April 16, 2019

(b)(6); (b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

Re: Administrative Claim **Received April 8, 2019**
Claim No. TRT-NER-2019-03659

Dear Mr. (b)(6); (b)(7)(C)

This will acknowledge receipt of your administrative claim for an alleged loss of personal property or personal injury suffered at MDC Brooklyn.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim.

All correspondence regarding this claim should be addressed to Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Street, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact this office immediately. Also, should your address change, you should contact this office in writing accordingly.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

May 10, 2019

(b)(6); (b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

Re: Administrative Claim **Received April 8, 2019**
Claim No. TRT-NER-2019-03659

Dear Mr. (b)(6); (b)(7)(C)

This will acknowledge receipt of your administrative claim for an alleged loss of personal property or personal injury suffered at MDC Brooklyn.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim.

All correspondence regarding this claim should be addressed to Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Street, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact this office immediately. Also, should your address change, you should contact this office in writing accordingly.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA 19106

October 7, 2019

(b)(6); (b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

RE: Administrative Claim No. TRT-NER-2019-03659

Dear Mr. (b)(6); (b)(7)(C)

Administrative Claim No. TRT-NER-2019-03659, properly received in this office on April 8, 2019, has been accepted and considered for settlement as provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2672, under authority delegated to me by 28 C.F.R. § 543.30. You seek \$250,000.00 in compensation for an alleged personal injury sustained at MDC Brooklyn between January 27, 2019, and February 3, 2019. Specifically, you state a power outage adversely affected the institution's heating, hot water, meals and lighting. You contend you feared for your personal safety.

An investigation, including a review of your medical records, reveals you did not seek medical attention from Health Services for medical care as it relates to the power outage. You have not alleged an identifiable physical injury actionable under the Federal Tort Claims Act 28 U.S.C. §§ 1346(b)(2), 2672. There is no evidence you experienced a compensable loss as the result of negligence on the part of any Bureau of Prisons employee. Accordingly, your claim is denied.

If you are dissatisfied with this decision, you may bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,

Darrin Howard
Regional Counsel

cc: D. Edge, Warden, MDC Brooklyn

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

(b)(6); (b)(7)(C)

2. Article Number (Transfer from service label)

7016 1370 0001 4120 2274

PS Form 3811, July 2015 PSN 7530-02-000-9053

4120 1370 0001 4120 2274

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
Enter delivery address below: ☒ No

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☒ Certified Mail Restricted Delivery | ☒ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |

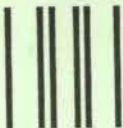
Domestic Return Receipt

USPS TRACKING #



9590 9402 4990 9063 5105 25

United States
Postal Service



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•

Northeast Regional Office
Federal Bureau of Prisons
U.S. Customs House
2nd & Chestnut Streets, 7th Floor
Philadelphia, PA 19106

Lee

(b)(6)
(b)(7)(C)



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

October 4, 2019

Ms. Jean Prabhu
Burns & Harris Attorneys At Law
The Woolworth Building
233 Broadway, Suite 900
New York, NY 10279

Re: Administrative Tort Claim Received September 24, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-06556

Dear Ms. Prabhu:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury at MDC Brooklyn between January 27, 2019, and February 3, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

BURNS & HARRIS

ATTORNEYS AT LAW

SETH A. HARRIS

ALISON R. KEENAN
BLAKE G. GOLDFARB
SHERI E. HOLLAND

VIRGINIA L. MCGRANE
JUDITH F. STEMLER
JASON STEINBERG
ANDREW G. MEIER
JAMES MARINO

VIA CERTIFIED MAIL/RRR

Federal Bureau of Prisons
Attn: Legal Department
Central Office HQ
320 First Street, NW
Washington, DC 20534

JASON M. BATEMAN
CLIFFORD R. TUCKER
KARDON A. STOLZMAN
MATTHEW R. JAEGER
JOHNSON L. ATKINSON

JEAN M. PRABHU
ALAN CHESTER SALZMAN
HARVEY WINER
JAMES K. GREENBERG
Of Counsel

August 6, 2019

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL OFFICE

AUG 30 2019

NERO-PHILADELPHIA

Re:

(b)(6); (b)(7)(C)

Supplemental Claim

Location: MDC Brooklyn

Dates of Incident: 1/27/19 – 2/03/19

To Whom It May Concern:

Please be advised that this firm represents the above-referenced claimant along with his prison ID, whom was in the custody of the MDC Brooklyn on January 27, 2019 through February 3, 2019 and suffered injuries based on violation of 42 USC 1983 of the Constitution of the United States, including but not limited to the Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution. On June 14, 2019, our office served upon you a claim on behalf of 37 claimants including the claimant listed above, and now serves this Supplemental Claim.

Upon information and belief, on January 27, 2019, an electrical fire broke out in MDC Brooklyn's west building causing damages to the building's infrastructure which significantly affected the prison's heating, venting, cooling, plumbing and electrical systems. The MDC Brooklyn and Warden Herman E. Quay failed to remedy those conditions for over a week and did not seek outside help or take measures to protect and ensure the safety of those in custody at the facility.

A humanitarian crisis unfolded as prisoners were subjected to inhumane conditions that posed unreasonable and substantial risks to their health and safety. The above claimant was deprived of basic human needs and any communication with the outside world, including but not limited to the following:

- Heating (in freezing temperatures)
- Suitable nutrition
- Electricity (kept in darkness)
- Flushable toilets/plumbing/showers
- drinking water
- Medical attention/medication
- Breathable air free from toxic fumes
- Access to clean clothes and bedding
- Excessive lockdown
- Extra blankets for warmth
- Communications with Counsel/family
- Administrative remedies

Wherefore, [REDACTED] sustained damages in excess of one million dollars \$1,000,000.00.

Respectfully,



JEAN PRABHU

JP/rb/enc.

FIRST • CLASS

FIRST • CLASS

FIRST • CLASS

CERTIFIED MAIL



7019 1120 0000 5291 9036

958

First Class Mail

B BURNS & HARRIS
ATTORNEYS AT LAW

THE WOOLWORTH BUILDING
233 BROADWAY, SUITE 900
NEW YORK, NY 10279

Federal Bureau of Prisons
Attn: Legal Department
Central Office HQ
320 First Street, NW
Washington, DC 20534

205863



2019-02980 67 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000067

AMERICAN
OVERSIGHT



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA 19106

September 10, 2019

Ms. Jean Prabhu
Burns & Harris
The Woolworth Building
233 Broadway, Suite 900
New York, NY 10279

Re: Your Administrative Claims Received August 23, 2019

Dear Ms. Prabhu:

This will acknowledge receipt of the following administrative tort claims you filed on behalf of claimants seeking compensation for alleged personal injuries they suffered at the Metropolitan Detention Center in Brooklyn, New York:

(b)(6); (b)(7)(C)

Ms. Jean Prabhu
September 10, 2019
Page 2

(b)(6); (b)(7)(C)

Each claim provided a sum certain "in excess of one million dollars." However, pursuant to 28 C.F.R. § 14.2, each claim must seek a specific dollar amount when you file a claim. Accordingly, the claims are rejected at this time.

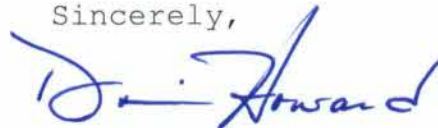
In addition, we will not be able to correspond with you unless you provide proof that you are authorized to represent each claimant as their legal representative. See 28 C.F.R. § 14.2.

If you wish these claims to be considered for administrative settlement, please re-submit the claim documents with the above-noted information. The enclosed Claim for Damage, Injury or Death form (SF-95) may be used in the instance of personal injury for each claim.

Lastly, please be advised that constitutional claims are not cognizable under the Federal Tort Claims Act.

All correspondence regarding these claims should be addressed to Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Street, Philadelphia, Pennsylvania 19106. If the circumstances surrounding these claims change in any fashion, you should contact this office immediately. Also, should your address change, you should advise this office accordingly.

Sincerely,



Darrin Howard
Regional Counsel

Enclosure

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☐ CIVILIAN	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. OR P.M.)	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights).		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).			13b. PHONE NUMBER OF PERSON SIGNING FORM	14. DATE OF SIGNATURE	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

95-109

AMERICAN
OVERSIGHT

2019-02980 70 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000070

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is **solely** for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

9/10/19 *multiple claims*

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY													
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature ☐ Agent ☐ Addressee X													
1. Article Addressed to:	B. Received by (<i>Printed Name</i>)	C. Date of Delivery												
Ms. Jean Prabhu Burns & Harris The Woolworth Building 233 Broadway, Suite 900 New York, NY 10279	D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☒ No													
2. Article Number (<i>Transfer from service label</i>)	3. Service Type <table border="0"> <tr> <td>☐ Adult Signature</td> <td>☐ Priority Mail Express®</td> </tr> <tr> <td>☐ Adult Signature Restricted Delivery</td> <td>☐ Registered Mail™</td> </tr> <tr> <td>☐ Certified Mail®</td> <td>☐ Registered Mail Restricted Delivery</td> </tr> <tr> <td>☒ Certified Mail Restricted Delivery</td> <td>☒ Return Receipt for Merchandise</td> </tr> <tr> <td>☐ Collect on Delivery</td> <td>☐ Signature Confirmation™</td> </tr> <tr> <td>☐ Collect on Delivery Restricted Delivery</td> <td>☐ Signature Confirmation Restricted Delivery</td> </tr> </table>		☐ Adult Signature	☐ Priority Mail Express®	☐ Adult Signature Restricted Delivery	☐ Registered Mail™	☐ Certified Mail®	☐ Registered Mail Restricted Delivery	☒ Certified Mail Restricted Delivery	☒ Return Receipt for Merchandise	☐ Collect on Delivery	☐ Signature Confirmation™	☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Adult Signature	☐ Priority Mail Express®													
☐ Adult Signature Restricted Delivery	☐ Registered Mail™													
☐ Certified Mail®	☐ Registered Mail Restricted Delivery													
☒ Certified Mail Restricted Delivery	☒ Return Receipt for Merchandise													
☐ Collect on Delivery	☐ Signature Confirmation™													
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery													
7013 0600 0001 9910 9338														

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt



BURNS & HARRIS

ATTORNEYS AT LAW

SETH A. HARRIS

ALISON R. KEENAN
BLAKE G. GOLDFARB
SHERI E. HOLLAND

JUDITH F. STEMLER
JASON STEINBERG
ANDREW G. MEIER
STEPHEN S. LA ROCCA
IRWIN J. WEINSTEIN

JASON M. BATEMAN
JOHNSON L. ATKINSON
MAX SILVERBERG
KARLESHA V. HEWITT
FRANK L. LANZA

JEAN M. PRABHU
ALAN CHESTER SALZMAN
HARVEY WINER
JAMES K. GREENBERG
Of Counsel

September 19, 2019

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL OFFICE

SEP 24 2019

NERO-PHILADELPHIA

Federal Bureau of Prisons
Northeast Regional Office
Darrin Howard, Regional Counsel
US Custom House
2nd & Chestnut Streets, Room 701
Philadelphia, PA 19106

Re:

(b)(6); (b)(7)(C)

Claim No: TRT-NER-2019-06556

Dear Mr. Howard:

I am in receipt of your correspondence of September 10, 2019, and accordingly, have enclosed a copy of the above claimant's Retainer indicating Burns & Harris is his authorized representative for this claim.

The above claimant was in the custody of the MDC Brooklyn on January 27, 2019 through February 3, 2019 and suffered personal and emotional injuries based on the negligence and intentional infliction of physical and emotional injury at MDC Brooklyn and violation of 42 USC 1983 of the Constitution of the United States, including but not limited to the Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution. This is our third submission of this claim and have previously served notices dated June 14, 2019 and August 6, 2019.

Upon information and belief, on January 27, 2019, an electrical fire broke out in MDC Brooklyn's west building causing damages to the building's infrastructure which significantly affected the prison's heating, venting, cooling, plumbing and electrical systems. The MDC Brooklyn and Warden Herman E. Quay failed to remedy those conditions for over a week and did not seek outside help nor take measures to protect and ensure the safety of those in custody at the facility.

A humanitarian crisis unfolded as prisoners were subjected to inhumane conditions that caused unreasonable and substantial injury. The above claimant was deprived of basic human needs, medical attention, any communication with the outside world, and suffered personal and emotional injuries as a result.

Wherefore, the above claimant sustained damages in the amount of one million dollars \$1,000,000.00.

Respectfully,



JEAN PRABHU

JP/rb/Enc.

AMERICAN
OVERSIGHT

THE WOOLWORTH BUILDING • 233 BROADWAY • NEW YORK, NY 10079 • TEL (212) 393-1000 • FAX (212) 267-2110

2019-02980-74 of 227

WWW.BURNSHARRIS.COM

DOJ-19-0278, 19-0279, and 19-0280-F-000074

RETAINER AGREEMENT

TO: BURNS & HARRIS
233 Broadway, Suite 900
New York, NY 10279
(212) 393-1000

I, [REDACTED] (Client), the undersigned retains the law office of BURNS & HARRIS (law firm), as my attorneys to prosecute a claim for negligence against any and all parties, individuals and/or corporations that are found to be liable under the law for damages suffered by me arising from personal injury sustained by me. I _____, the spouse of _____ (Client), retains the law office of BURNS & HARRIS (law firm) to represent me for a derivative cause of action for the loss of services and society of my spouse due to the injuries claimed as a result of the defendant(s) negligence. I(We) specifically agree as follows:

1. **FEE PERCENTAGE:** Although I have been advised of the right to retain the law firm under an arrangement whereby the firm would be compensated on the basis of the reasonable value of services rendered or on an hourly rate, I and the law firm agree that the law firm shall be paid Thirty Three and One-Third (33 1/3%) Percent of the sum recovered, whether by suit, settlement or otherwise. In computing the fee, the costs as taxed, including interest upon a judgment, shall be deemed part of the amount recovered. In litigating the claim, the law firm may become eligible for attorneys' fees under 42 U.S.C. § 1988. The Client agrees that any and all fees obtained by the law firm under 42 U.S.C. § 1988 are to be paid to the law firm in addition to the 33 1/3% of the sum recovered. If, as a result of the recovery obtained in your lawsuit brought by the law firm, a workers' compensation carrier waives any of its workers' compensation lien, then the law firm shall be entitled to recover from you an additional fee of 33 1/3% of the portion of the waiver that exceeds one third of the total lien amount owed.

2. **DISBURSEMENTS:** In the event there is no recovery, the Client shall not be obligated to pay the law firm a legal fee for services rendered. Disbursements may include some of the following expenses: court filing fees, sheriff fees, medical and hospital report/record fees, doctor's report, court stenographer fees, deposition costs, expert fees for expert depositions and court appearances, trial exhibits, computer on-line search fees, express mail, postage, photocopy charges, document management charges, long distance telephone charges, among other charges. Document management charges are the fees charged by the law firm for processing documents during litigation, such as medical records, documents produced by defendants(s) and/or other parties, etc. Processing of the documents may include but is not limited to the following: (1) scanning; (2) conversion of native files to PDF documents; (3) OCR (Optical Code Recognition); and/or (4) indexing. At the time of settlement and distribution of proceeds, if the law firm has advanced the disbursements, the law firm shall be reimbursed for all disbursements which shall be deducted from the recovery.

In the event that this firm has been retained by others having the same claim or a similar case, disbursements regarding the liability and/or damages of the defendants may be shared proportionately by all such plaintiffs.

The disbursements involved in prosecuting the case may be advanced by the Client or by the law firm. The Client may choose either option. If the Client elects to advance the money for disbursements (Option I), the Client must pay each disbursement as it is incurred. If the Client elects to have the law firm advance the money for Disbursements (Option II), at the end of each case, the law firm shall be reimbursed from the recovery for any disbursements the law firm advanced.

In the event the Client elects to advance the disbursements (Option I), at the time of the final settlement or distribution of judgment proceeds, these expenses shall be deducted prior to the computation of the Attorney's Fee. If there is no recovery, the law firm will have no responsibility to repay the client for case disbursements.

In the event the Client elects to have the law firm advance the disbursements (Option II), at the time of the final settlement or distribution of judgment proceeds, these expenses shall be deducted from the Client's share after the computation of the Attorney's Fee. If there is no recovery, or if the amount recovered is not sufficient to pay such disbursements in full, Client will not be responsible to pay such disbursements.

In the event no choice is selected by the Client, it will be assumed that the Client wishes to have the law firm advance all disbursements (Option II).

Option I

(initials)_____ I elect to advance the money for disbursements. I want to be billed for each disbursement as incurred. I understand that my immediate payment of such charges is required as many fees are tied to time-sensitive deadlines.

Option II

(initials) (b)(6); (b)(7)(C)_____ I elect to have the law firm advance the money for disbursements. I do not want to be billed for each disbursement as incurred. I agree that if there is a recovery of money on my case, the law firm will be reimbursed from that recovery for the costs and expenses advanced by the law firm. The Client hereby gives permission that the law firm may borrow monies from a third party for expenses and disbursements. Interest will then be charged to the Client as an additional expense.

3. **COMPUTATION OF FEES:** Under Option II, the contingency fee shall be computed on the gross recovery, resulting in a net settlement (or judgment), from which all appropriate disbursements in connection with the institution and prosecution of this claim are deducted, as set forth in paragraph 2 above. Under Option I, the contingency fee shall be computed on the net recovery after all appropriate disbursements in connection with the institution and prosecution of this claim are deducted, as set forth in paragraph 2 above. Examples of how a contingency fee is computed are as follows:

Option I

Client advances disbursements:

Gross Settlement	\$100.00
Disbursements	- \$10.00
Net settlement	\$90.00
33 1/3% Attorney's Fee	<u>\$30.00</u>
Net to Client	\$60.00

Option II

Law firm advances disbursements:

Gross Settlement	\$100.00
33 1/3% Attorney's Fee	<u>\$33.33</u>
Net settlement	\$66.67
Disbursements	- \$10.00
Net to Client	\$56.67

4. **MEDICAL BILLS:** All medical bills incurred which are not paid by the Client's medical insurance and are due and owing shall be chargeable to the Client's portion of the settlement. There may be additional deductions representing outstanding medical bills, liens to doctors for unpaid medical services rendered, or medical services not covered by medical insurance. The recovery of these medical services are included in the gross settlement and shall be paid from the Client's share of the recovery. Unpaid medical providers often will wait for payment until the conclusion of the case, however, in consideration for such abeyance, they will request a lien upon the settlement proceeds. The Client expressly authorizes the firm to sign such lien forms, which may be requested by physicians, and to directly pay outstanding medical bills for treatment to such physicians or other health care providers at the conclusion of the case. This authorization shall include medical and hospital expenses, and subrogation claims. The Client understands that medical providers do not provide medical services contingent upon the outcome of a case, and that in the event that there is no recovery, or an insufficient recovery, the Client will remain responsible for the payment of such medical bills.

5. **NO-FAULT PROCESSING FEE:** If this Retainer Agreement is entered for the processing of a claim for personal injuries arising from a motor vehicle accident wherein "No-Fault" insurance is applicable, it is agreed that the undersigned shall pay a fee of \$350.00 (Three Hundred Fifty Dollars) upon the successful conclusion of the case for the processing of statutory "No-Fault" benefits. This charge represents a lien on any proceeds of the case in favor of the attorney for professional services rendered in processing the "No-Fault" benefits.

6. **WITHDRAWALS:** The law firm expressly reserves the right to withdraw its representation at any time upon reasonable notification to the Client. In the event that the Client advises the law firm to discontinue the handling of this claim, or if the Client fails to cooperate with the law firm in the handling of this claim, Client agrees to compensate the law firm a reasonable amount for its services, and for the time spent on this claim on an hourly basis or under such other arrangement that may be agreed upon by the parties. The Client understands that the law firm has

conditionally accepted this case based upon the independent confirmation of all facts and injuries claimed to have been sustained by Client. In the event that the Client desires to transfer the file from this office, the Client shall be responsible to compensate the law firm for the reasonable value of their services. Such transfer shall not include documents or attorney work product regarding the general liability of the defendants.

7. APPEALS: Client further understands that the services to be provided through this agreement will NOT extend through the prosecution/defense of an appeal or representation on an appeal brought by any of the parties to the lawsuit. Client understands that BURNS & HARRIS, ESQS. may charge reasonable additional compensation if the case is appealed, or it is necessary to try the case more than once, the amount of which shall be an additional ten (10%) percent – totaling forty-three and one-third percent (43 1/3%) – of the sum recovered in negligence, intentional tort, civil rights and legal malpractice cases. Should attorney's fees under 42 USC § 1988 be awarded and an appeal be prosecuted pursuant to this section the firm may elect either 42 USC § 1988 fees or a 10% fee pursuant to this section but not both.

This further appellate representation will not require a new Fee Agreement. In the event the CLIENT's case is dismissed or an unfavorable verdict is rendered, the CLIENT agrees that BURNS & HARRIS, ESQS. reserves the right to decide whether or not to prosecute an appeal. If BURNS & HARRIS, ESQS. declines to prosecute an appeal, and appeal is taken, and at any point in the appeal process there is an eventual recovery made in the case on behalf of the CLIENT, BURNS & HARRIS, ESQS. will be entitled to a fee that represents the fair value of the services rendered. BURNS & HARRIS, ESQS. shall have the first right of selecting the basis of their fee in the first instance, and if BURNS & HARRIS, ESQS. elects to be paid on an hourly rate, they shall be paid based on an hourly rate of six hundred dollars an hour (\$ 600/hour) for all work performed by BURNS & HARRIS, ESQS., and their agents/servants/employees. Unless otherwise stated in writing, BURNS & HARRIS, ESQS., elects to be paid on a contingent fee basis.

(b)(6); (b)(7)(C)

(initials)

8. SURROGATES COURT PROCEEDINGS: If the law firm decides to handle Surrogate's Court work and the client agrees, the firm may hire a Surrogate Court attorney and to take fees from the client's share of the recovery. The establishment of a trust may be performed at an extra expense to the client. The client may consult with an elder lawyer, wills or trusts attorney at their own expense.

9. STATUTE OF LIMITATIONS: I understand that the Statute of Limitations period for my case must be investigated and that this Agreement is made subject to that investigation as well as an investigation of my entire case.

10. FINANCING OF CASE: If the firm borrows money from any lending institution to finance the cost of the Client's case, the amounts advanced by this firm to pay the cost of prosecuting or defending a claim or action or otherwise protecting or promoting the Client's interest will bear interest at the highest lawful rate allowed by applicable law. In no event will the interest be greater than the amount paid by the firm to the lending institution.

11. **RESULTS NOT GUARANTEED:** No attorney can accurately predict the outcome of any legal matter, accordingly, no representations are made, either expressly or impliedly, as to the final outcome of this matter. I further understand that I must immediately report any changes in my residence, telephone number or health to the law firm. I understand that this Retainer Agreement is a binding legal contract. I expressly agree that I will fully and freely cooperate with my attorneys in all aspects required for the prosecution of this legal matter and that I will take no actions that frustrate or impair the success of this action.

(b)(6); (b)(7)(C) (initials)

12. **APPROVAL NECESSARY FOR SETTLEMENT:** Attorneys are hereby granted a power of attorney so that they may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to conclude this representation, including settlement and/or reducing to possession any and all monies or other things of value due to the Client under the claim as fully as the Client could do so in person. Attorneys are also authorized and empowered to act as Client's negotiator in any and all negotiations concerning the subject of this Agreement.

13. **ASSOCIATION OF OTHER ATTORNEYS:** Attorneys may, at their own expense, use or associate other attorneys in the representation of the aforesaid claims of the Client. Client understands that *the firm*, Seth A. Harris PLLC d/b/a Burns & Harris, is a professional limited liability company under the laws of New York with a number of attorneys. Various firm attorneys may work on Client's case.

14. **ASSOCIATE COUNSEL:** Attorneys may participate in the division of fees in this case and assume joint responsibility for the representation of the Client either in the event that the Attorney retains associate counsel or that the Client later chooses new counsel, provided that the total fee to the Client does not increase as a result of the division of fees and that the attorneys involved have agreed to the division of fees and assumption of joint responsibility.

15. **FEE DISPUTES:** In case of a fee dispute, the undersigned may be entitled to arbitration, if the fee falls within the parameters of the Fee Dispute Resolution Program, pursuant to 22 N.Y.C.R.R. PART 137 of the New York State Court Rules.

16. **COLLECTION WORK:** All work required to prosecute a collection case to recover an award will not be covered by this Agreement.

17. **NEW YORK LAW TO APPLY:** This Agreement shall be construed under and in accordance with the laws of the State of New York and the rights, duties and obligations of Client and of Attorneys regarding Attorney's representation of Client and regarding anything covered by this Agreement shall be governed by the laws of the State of New York.

18. **PARTIES BOUND:** This Agreement shall be binding upon and inure to the benefit of the parties, hereto, and their respective heirs, executors, administrators, legal representative, successors, guardians and assigns.

19. **LEGAL CONSTRUCTION:** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such

invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

20. PRIOR AGREEMENTS SUPERSEDED: This Agreement constitutes the sole and only Agreement of the parties hereto and supersedes any prior understanding or written or oral agreement between the parties respecting the within subject matter.

I certify and acknowledge that I have had the opportunity to read this Agreement and have answered any questions pertaining thereto. I further state that I have voluntarily entered into this Agreement fully aware of the terms and conditions.

DATED: Feb 21, 2019

(b)(6); (b)(7)(C)

S.)

Witness: _____

(L.S.)

Express

RT 494

FZ

1
16:30
A
0640
09.24

ORIGIN ID: PCTA (212) 393-1000
RENEE BIEN-AIME
BURNS & HARRIS
233 BROADWAY, SUITE 900

NEW YORK, NY 10279
UNITED STATES US

SHIP DATE: 20SEP19
ACTWGT: 4.00 LB
CAD: 108136325/INET4160

BILL SENDER

TO DARRIN HOWARD, REGIONAL COUNSEL
FEDERAL BUREAU OF PRISONS
US CUSTOM HOUSE
2ND & CHESTNUT STREETS, ROOM 701
PHILADELPHIA PA 19106

(215) 521-7301

REF: MDC BROOKLYN 205863

INV
PO

DEPT



FedEx
Express



WED - 25 SEP 4:30P
EXPRESS SAVER

TRK# 7762 9501 0640
0201

SB BBXA

19106
PA-US PHL



5671160040542

ak



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA 19106

October 3, 2019

(b)(6); (b)(7)(C)

Moshannon Valley Correctional Center
555 Geo Drive
Philipsburg, PA 16866

RE: Administrative Claim No. TRT-NER-2019-03044
Reconsideration
Claim Received April 4, 2019

Dear Mr. (b)(6); (b)(7)(C)

Your request for reconsideration of Administrative Claim No. TRT-NER-2019-03044 was properly received on April 4, 2019, and reconsidered for settlement as provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2672, under authority delegated to me by 28 C.F.R. § 543.30. You seek \$500,000.00 in compensation for an alleged personal injury sustained at MDC Brooklyn between January 27, 2019, and February 3, 2019. Specifically, you state a power outage adversely affected the institution's heating, hot water, and lighting. You allege you suffered severe emotional distress, which affected your ability to sleep and focus. You contend you feared for your personal safety.

A careful review of the reconsideration shows you have not submitted any new evidence in support of the allegations made in your administrative claim. A review of your medical records does not reflect you sought medical care from Health Services for any ailment attributable to the power outage. There is no evidence you experienced a compensable loss as the result of negligence on the part of any Bureau of Prisons employee. Accordingly, your claim is denied.

If you are dissatisfied with this decision, you may bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,

Darrin Howard
Regional Counsel

cc: D. Edge, Warden, MDC Brooklyn

MTN 2019 03044

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. [REDACTED]
Reg. No. 61594-044
Moshannon Valley Correctional Center
555 Geo Drive
Philipsburg, PA 16866
5063 5122 08

2. Article Number (Transfer from service label)

7016 1370 0001 4119 5385

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If Yes, print delivery address below: ☒ No

- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt





U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA 19106

March 21, 2019

(b)(6); (b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

RE: Administrative Claim No. TRT-NER-2019-03044
Claim Received March 13, 2019

Dear Mr. (b)(6); (b)(7)(C)

This is in response to your administrative tort claim in which you seek \$100,000.00 in compensation for an alleged personal injury sustained at MDC Brooklyn between January 27, 2019, and February 3, 2019. Specifically, you state a power outage adversely affected the institution's heating, hot water, and lighting. You allege you suffered severe emotional distress, which affected your ability to sleep and focus. You contend you feared for your physical safety and possible assault.

After review, we have decided to deny your claim because you have not alleged an identifiable physical injury actionable under the Federal Tort Claims Act. 28 U.S.C. §§ 1346(b)(2), 2672.

If you are dissatisfied with this decision, you may bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,

Darrin Howard
Regional Counsel

cc: H. Quay, Warden, MDC Brooklyn

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1.

(b)(6),
(b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232



9590 9402 4542 8278 8148 38

2. Article Number (Transfer from service label)

PS Form 3811, July 2015 PSN 7530-02-000-9053

YUTNER 2019 03044

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

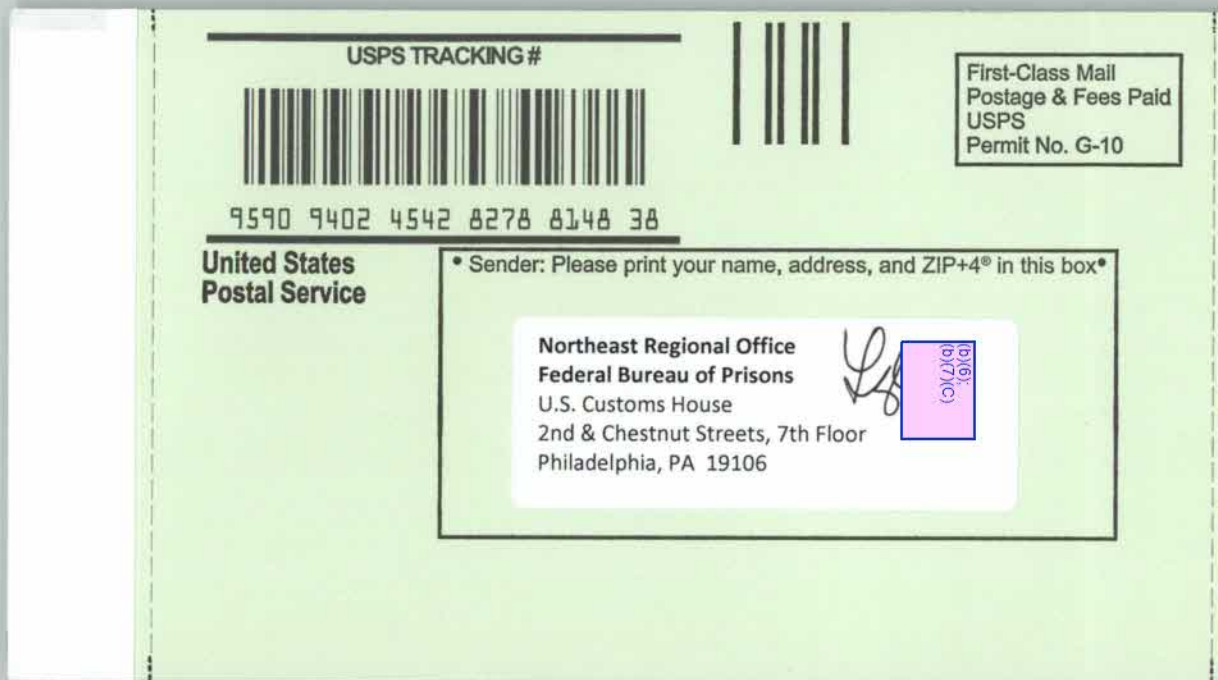
C. Date of Delivery

Is this address different from item 1? ☐ Yes
Delivery address below: ☒ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☒ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt



DARRIN HOWARD, ESQ.
NORTHEAST REGIONAL COUNSEL
FEDERAL BUREAU OF PRISONS
NORTHEAST REGIONAL OFFICE
200 CHESTNUT STREET -- ROOM 701
PHILADELPHIA, PENNSYLVANIA 19106

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

APR 04 2019

NERO-PHILADELPHIA

Re: Administrative Tort Claim No. TRT-NER-2019-03044

Dear Mr. Howard:

Claimant submits this letter, pursuant to 28 C.F.R. 14.9(b), seeking reconsideration of the final decision denying the administrative claim for the negligent infliction of emotion distress. Further, Claimant hereby increases his demand for compensatory damages in light of the agency's decision and the physical and psychological injuries Claimant suffered by virtue of staff's negligence. For the reasons set forth hereinafter, reconsideration is both appropriate and warranted, and this claim should be promptly settled.

As a preliminary matter, Claimant initially sought compensatory damages in the amount of \$100,000.00. Claimant hereby increases that demand to \$500,000.00.

The Federal Bureau of Prisons has declined to offer a settlement on the claim for compensatory premised upon a breach of a duty of care owed to Claimant under 18 U.S.C. 4042(a)(2) and (3), which resulted in the negligent infliction of emotional distress and physical injury. As the sole basis for denying the claim, your office incorrectly concluded that Claim had "not alleged an identifiable physical injury actionable under the Federal Tort Claims Act 28 U.S.C. 1346(b)(2), 2672." Claimant is neither a convicted prisoner awaiting sentencing, nor a sentenced prisoner. Therefore, your reliance on 28 U.S.C. 1346(b)(2) has been misplaced. Reconsideration is warranted.

"Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401 (b), a claimant . . . may file a written request with the agency for reconsideration of the denial of a claim . . ." (28 C.F.R. 14.9(b)) Here, the agency clearly overlooked binding authority holding that claims of "negligent infliction of emotional distress" are cognizable and actionable under the Federal Tort Claims Act. See, e.g., *Mortise v. United States*, 102 F.3d 693, 696 (2d Cir. 1996); and *Lavoie v. United States*, 361 F. App'x 206, 207 (2d Cir. 2010). Thus, reconsideration is in order and the claim should be settled given the incomprehensible and irresponsible breach of a duty of care owed to Claimant by the Federal Bureau of Prisons pursuant to 18 U.S.C. 4042(a)(2) and (3), which resulted in both physical injury and the negligent infliction of emotional distress.

Dated: March 29, 2019

Respectfully submitted,

(b)(6); (b)(7)(C)

NAME:

(b)(6); (b)(7)(C)

REGISTER NO.:

(b)(6); (b)(7)(C)

METROPOLITAN DETENTION CENTER
P.O. BOX 329002
BROOKLYN, NEW YORK 11232

(b)(6); (b)(7)(C)

M.S.C. Brooklyn
P.O. Box 324002
Brooklyn, New York 11232

NEW YORK NY 100

02 SEP 2014 PM 4:11



Sarin Howard, Esq.
Northeast Regional Counsel
Federal Bureau of Prisons
500 Chestnut Street
Philadelphia, PA 19106

1510632973 0035



DARRIN HOWARD, ESQ.
NORTHEAST REGIONAL COUNSEL
U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
NORTHEAST REGIONAL OFFICE
200 CHESTNUT STREET
PHILADELPHIA, PENNSYLVANIA 19106

Re: Administrative Tort Claim for Personal Injury [28 U.S.C. 2671, et. seq.]

Dear Mr. Howard:

The undersigned Claimant respectfully submits this claim under the Federal Tort Claims Act ("FTCA") [28 U.S.C. 2672], and 28 C.F.R. 543.30, seeking compensatory damages in the amount of \$100,000.00 for personal injury that he suffered as a result of negligence by Federal Bureau of Prisons staff at the Metropolitan Detention Center ("MDC") in Brooklyn, New York. For the reasons that follow, this claim should be promptly settled.

I. THE RELEVANT FACTS.

At all times between January 27, 2019 and February 3, 2019, claimant was detained at the MDC (West Building). On January 27, 2019, the institution experienced a power outage which, upon information and belief, resulted from an electrical fire. Upon information and belief, the power outage adversely affected the institution's heating, hot water, and lighting. More specifically, each cell (including claimant's assigned cell) was without lights, hot water, or heat for the approximately eight days (i.e. January 27, 2019 thru February 3, 2019). Staff was aware of the inhumane conditions, and took no steps to immediately restore the housing units or the cells within those units to habitable conditions.

Notably, however, on February 3, 2019, staff began distributing extra blankets to inmates on some units in an effort to combat the exceptionally frigid temperatures. It should also be noted that during this period, institutional staff would visit housing units to check the cell temperatures. Some inmates blocked their ventilation ducts in an effort to prevent the exceptionally cold air from entering their cells through the ventilation system. This, however, also prevented staff from obtaining an accurate electronic reading of the temperature in those cells which had their vents blocked. Thus, on at least two occasions, staff entered the housing unit and presented to a particular cell where the air vent had been blocked, and recorded a temperature reading that was much warmer than the temperature in other cells where inmates had not blocked their air vents.

Throughout the period where claimant was denied suitable quarters, heat, hot water, and lights, he feared for his physical safety. He feared possible assault on his person by other inmates assigned to his housing unit. Despite inadequate lighting in the housing units, from on or about January 28, 2019 thru February 1, 2019, claimant and more than 100 other inmates assigned to his housing unit were permitted (and even required) to exit and remain outside of their respective cells for extended periods of times throughout the day and evening, supervised by only a single staff member who was physically unable to observe inmate activity throughout the unit due to extremely limited lighting in the common area. Claimant was required to exit his cell and enter the common area to obtain and consume his meals, as well as to shower. It should also be noted that during the institutional crisis, mental health staff was inaccessible to claimant and all other inmates assigned to his housing unit. This claimant was also not afforded an opportunity to meet with medical staff. All access to claimant's attorney was denied as attorneys were not permitted to enter the institution, and both the inmate telephone and email systems were not operational. Inmates were also denied a meaningful opportunity to send general correspondence since they were denied access to commissary to purchase required postage.

Again, despite the magnitude of the inhumane crisis, MDC staff took no immediate or appropriate action to restore the institution to normal operations, or to adhere to their responsibility to provide Claimant with appropriate housing.

During this crisis period claimant suffered severe emotional distress which affected, inter alia, claimant's ability to sleep and focus.

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

MAR 13 2019

NERO-PHILADELPHIA

AMERICAN
OVERSIGHT

2019-02980 90 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000090

II. THE RELEVANT LAW.

(a) Liability Under The Federal Tort Claims Act.

The Federal Tort Claims Act ("FTCA") provides that the United States is liable for injury caused by the negligence of its employees under circumstances where a private person would be liable according to "the laws of the place where the act or omission occurred," and thus New York law applies. {28 U.S.C. 1346(b); Kane v. United States, 189 F.Supp.2d 40, 51-52 (S.D.N.Y. 2002); Ducrepin v. United States, 964 F.Supp. 659, 663 (E.D.N.Y. 1997)} Under New York law, to prove a claim of negligence, plaintiff must establish three elements: (i) defendant owed plaintiff a duty of care; (ii) defendant breached that duty; and (iii) the breach proximately caused plaintiff's injury. {Kane, 189 F.Supp.2d at 51-52}

(b) The Bureau of Prisons Owed Claimant a Duty of Care.

Although state laws sets out the elements required to prove negligence, the standard of care for the Federal Bureau of Prisons is "fixed by 18 U.S.C. 4042, independent of [any] inconsistent state rule" allowing for a local jailor's immunity from suit, or a lesser duty. {United States v. Muniz, 374 U.S. 150, 164 (1963)} Section 4042(a) requires that the Bureau of Prisons provide "suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States." {18 U.S.C. 4042(a)(2)} This statutory duty means that the Bureau of Prisons must exercise "ordinary diligence" or reasonable care "to keep prisoners safe and free from harm." {Coward v. United States, 617 F.2d 112, 116 (5th Cir. 1980); see also Herrington v. United States, 1984 WL 1279, at *2 (S.D.N.Y. 1984); Castor v. United States, 883 F.Supp. 344, 350 (S.D. Ind. 1995)}

It is clear that "the mere failure to provide suitable quarters" is not actionable; there must be fault. {Muhammed v. United States, 6 F.Supp.2d 582, 595 (N.D. Tex. 1998)} Only "a failure to exercise ordinary care, or reasonable care, to provide suitable quarters" is actionable. {Id.; Graham v. United States, 2002 WL 188573, at *4 (E.D. Pa. 2002)(noting that mandatory duty of care set forth in Section 4042 "does not dictate the manner in which the duty must be fulfilled")}

(c) New York Law Governing Claims Negligent Infliction of Emotional Distress.

Under New York law, a claim of negligent infliction of emotional distress must be premised upon a breach of a duty owed "which either unreasonably endangers the plaintiff's physical safety, or causes the plaintiff to fear for his or her own safety." {Sheila C. v. Povich, 11 A.D.3d 120, 130 (1st Dep't 2004); see also Mortise v. United States, 102 F.3d 693, 696 (2d Cir. 1996)} Under New York law, a plaintiff may establish a claim of negligent infliction of emotion distress in one of two ways: (1) the "bystander" theory; or (2) the "direct duty theory." A plaintiff may recover for purely emotional injury under the "direct duty theory" when he/she suffers an emotional injury from defendant's breach of a duty which unreasonably endangers his/her own physical safety. {See, Mortise, 102 F.3d at 696 (citing Kennedy v. McKesson Co., 58 N.Y.2d 500, 504 (1983))} The duty in such cases must be specific to the plaintiff, and not some amorphous, free-floating duty to society. {Id.; (citing Johnson v. Jamaica Hosp., 62 N.Y.2d 523, 526-27 (1984))}

As noted, the Federal Bureau of Prisons owed claimant a specific duty of care, as described in Section 4042(a)(2) and (3), to provide him "suitable quarters," "safekeeping," and "protection."

III. APPLICATION OF THE LAW TO THE FACTS.

The facts and the law are relatively straightforward: On January 27, 2019, MDC Brooklyn experienced a significant power outage that adversely affected all housing units within its West Building. The outage rendered all cells (including claimant's) within the West Building uninhabitable by virtue of no lighting, heating, or hot water. MDC staff failed to take immediate steps to rectify the power outage or to restore the institutional to normal operations, as a result of being left in such inhumane and exceptionally dangerous conditions, claimant feared for his personal safety and life.

It goes without saying that the Federal Bureau of Prisons, in keeping with its mandated duty under Section 4042(a) (2) and (3), is required to provide "adequate heat" to all cells and housing units wherein prisoners will be confined. {See, Dugan v. Washington, 2001 WL 741626, at *5 (N.D. Ill. June 11, 2001)(noting that prisoners need only be provided "adequate heat") That duty is specific. The duty to provide "safekeeping" and "protection" is also specific. {See, 18 U.S.C. 4042 (a)(2) and (3)} Each of those specific duties were breached when MDC staff failed to take steps to immediately rectify the power outage, resulting in approximately eight continuous days of fear of physical injury.

Bureau of Prisons employee's negligence in this matter is both inexplicable and unacceptable. Indeed, the failure to act reasonably has prompted investigations from the Office of the Inspectors General, as well as others. Given the indisputable facts, and well settled law, claimant is entitled to compensatory damages in the amount of \$100,000.00.

IV. CONCLUSION.

For the reasons stated, claimant seeks prompt disposition and settlement of this claim.

Dated: Brooklyn, New York

March 7, 2019

Respectfully submitted,

(b)(6); (b)(7)(C)

[SIGNATURE]

(b)(6); (b)(7)(C)

[PRINT NAME]

(b)(6); (b)(7)(C)

[REGISTER NUMBER]

METROPOLITAN DETENTION CENTER
P.O. BOX 329002
BROOKLYN, NEW YORK 11232

-- CLAIMANT --

cc: U.S. Department of Justice
Office of the Inspector General

Federal Bureau of Prisons
Central Office
320 First Street, NW
Washington, DC 20534

New York Times (w/ecnl.)

New York Federal Defenders

b(6); (b)(7)(C)

UNITED STATES POSTAL SERVICE

11 MAR 2019 PM 4:1



Metropolitan Detention Center
P.O. Box 329002
Brooklyn NY 11238

Darin Howard Esq.
Northeast Regional Counsel
Federal Bureau of Prisons
200 Chestnut Street
Philadelphia, PA 19106-2979

19106-2979

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office

U.S. Custom House - 7th Floor
2nd and Chestnut Street
Philadelphia, PA 19106

Official Business

(b)(6)
(b)(7)(C)

RTS

PHILADELPHIA

PA 191

18 APR '19

FN 71



UNITED STATES POSTAGE
U.S. OFFICIAL MAIL
PENALTY FOR
PRIVATE USE \$300
PITNEY BOWES

02 1P
0001126544
APR 18 2019
MAIL FROM ZIP CODE 19106

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

MAY 13 2019

NERO-PHILADELPHIA

RETURN TO SENDER

- UNABLE TO IDENTIFY ADDRESSEE
- INMATE NO LONGER AT THIS FACILITY
X INMATE NAME & NUM DO NOT MATCH
- OTHER

NIXIE 100 CC 1 0105/10/19

RETURN TO SENDER
NO SUCH NUMBER
UNABLE TO FORWARD

BC: 19106 *2697-09598-18-43



U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office

U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA. 19106

April 16, 2019

(b)(6); (b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

Re: Administrative Claim Reconsideration **Received April 4, 2019**
Claim No. TRT-NER-2019-03044

Dear Mr. (b)(6); (b)(7)(C)

This will acknowledge receipt of your administrative claim reconsideration request for an alleged loss of personal property or personal injury suffered at MDC Brooklyn.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim.

All correspondence regarding this claim should be addressed to Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Street, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact this office immediately. Also, should your address change, you should advise this office accordingly.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel



U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office

*U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA. 19106*

May 14, 2019

(b)(6); (b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

Re: Administrative Claim Reconsideration **Received April 4, 2019**
Claim No. TRT-NER-2019-03044

Dear Mr. (b)(6); (b)(7)(C):

This will acknowledge receipt of your administrative claim reconsideration request for an alleged loss of personal property or personal injury suffered at MDC Brooklyn.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim.

All correspondence regarding this claim should be addressed to Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Street, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact this office immediately. Also, should your address change, you should advise this office accordingly.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
HARVEY PRAGER
SCOUT KATOVICH

October 29, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: *Administrative Complaint by* (b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C) enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. Custom House, 7th Floor Philadelphia, PA			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) /o Emery Celli Brinckerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, NY 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 01/27/2019 02/03/2019	
7. TIME (A.M. OR P.M.) A.M.					
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
DATE RECEIVED FEDERAL BUREAU OF PRISONS REGIONAL COUNSEL OFFICE NOV 01 2019 NERO-PHILADELPHIA					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Please see attached.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
NURSE (b)(6); (b)(7)(C)		MDC BROOKLYN			
DR (b)(6); (b)(7)(C)		MDC BROOKLYN			
NURSE (b)(6); (b)(7)(C)		MDC BROOKLYN			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 1,000,000		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). <i>Kathleen Rose</i>			13b. PHONE NUMBER OF PERSON SIGNING FORM (212) 763-5066		14. DATE OF SIGNATURE
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

95-109

AMERICAN
OVERSIGHT

2019-02980 98 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000098

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit I63, Cell I-63B
1047021
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures and/or extreme temperature variations without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.
- d. In addition to these facts, I also experienced the following circumstances between January 27, 2019 and February 3, 2019 while I was confined at MDC: I under went surgery for the removal of a spur at my right elbow. I returned to MDC absent post-surgery care, treatment or instructions. I suffered injury to my right shoulder rotator cusp from climbing up and down my top bunk in complete darkness and cold. Negative post x-ray examination results coupled with diurnal pain and extreme discomfort at right shoulder and elbow.

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold, and/or extreme temperature variations, and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness cause by lack of access to showers of clean clothing; and emotional and psychological distress.
- b. I suffer from elbow to should pain and loss of mobility and was not provided with proper pain medication or MRI for complete diagnosis.
- c. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3, 2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: cold sweats, muscle pain, headaches, mobility problems.

11. WITNESSES

The following people witnessed the circumstances that caused my injury:

Nurse [REDACTED], Dr. [REDACTED], Nurse [REDACTED]

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

10-07-, 2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, (b)(6); (b)(7)(C) authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely,

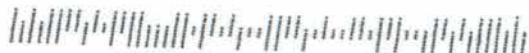
(b)(6); (b)(7)(C)

DOB:

(b)(6); (b)(7)(C)

EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106



FIRST-CLASS



2019-02980 103 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000103

AMERICAN
OVERSIGHT



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

*U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106*

November 12, 2019

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

Re: Administrative Tort Claim Received November 1, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2020-00956

Dear Ms. Rosenfeld:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn between January 27, 2019, and February 3, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN

September 5, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: *Administrative Complaint by*

(b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C) enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

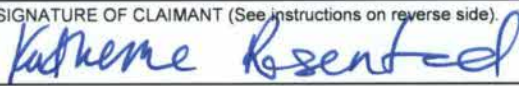
If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. CUSTOM HOUSE, 7TH FLOOR PHILADELPHIA, PA 19106			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) c/o Emery Celli Brickerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, New York 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)		5. MARITAL STATUS Single	
6. DATE AND DAY OF ACCIDENT 01/27/2019 02/03/2019		7. TIME (A.M. OR P.M.) A.M.			
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
CELLMATE #1		UNKNOWN			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY		12c. WRONGFUL DEATH	
		1,000,000		12d. TOTAL (Failure to specify may cause forfeiture of your rights).	
				1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM 212-763-5066		14. DATE OF SIGNATURE 9/4/19
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both (See 18 U.S.C. 287, 1001.) FEDERAL BUREAU OF PRISONS REGIONAL COUNSEL OFFICE		

NSN 7540-00-634-4046

SEP 12 2019

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2Authorized for Local Reproduction
Previous Edition is not Usable

95-109

AMERICAN
OVERSIGHT

2019-02980 106 of 227

NERO-PHILADELPHIA

DOJ-19-0278, 19-0279, and 19-0280-F-000106

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes ☐ No If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes ☐ No If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

- A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
 C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
 D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in the solitary housing unit.
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness caused by lack of access to showers or clean clothing; and emotional and psychological distress.
- b. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3,

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: nightmares, claustrophobia, night sweats, anxiety, and insomnia. During the blackout my toilet was shut off, and I was forced to stay in a tiny cell for days with a toilet full of feces. On at least two days one of my meals was never delivered.

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

08/ 19 /2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, (b)(6); (b)(7)(C) authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely,

(b)(6); (b)(7)(C)

D.O.B:

(b)(6); (b)(7)(C)

AMERICAN OVERSIGHT

FIRST-CLASS



US POSTAGE

02 1P
0001202922 SEP 05 2019
MAILED FROM ZIP CODE 10020

\$ 000.65⁰

EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

2019-02980 111 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000111



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

September 17, 2019

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

Re: Administrative Tort Claim Received September 12, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-06814

Dear Ms. Rosenfeld:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn between January 27, 2019, and February 3, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK
JESSICA CLARKE

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN

July 26, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: *Administrative Complaint by* (b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C) enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

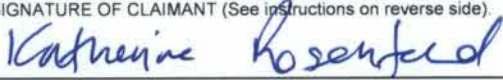
If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. CUSTOM HOUSE, 7TH FLOOR PHILADELPHIA, PA 19106			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) c/o Emery Celli Brickerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, New York 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)		5. MARITAL STATUS Married	
6. DATE AND DAY OF ACCIDENT 01/27/2019		7. TIME (A.M. OR P.M.) 02/01/2019 A.M.			
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
CELLMATE #1		UNKNOWN			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 1,000,000		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM 212-763-5066		14. DATE OF SIGNATURE 7/29/19
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287-1001)		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

AUG 01 2019
STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

95-109

AMERICAN
OVERSIGHT

2019-02980 114 of 227

NERO-PHILADELPHIA

DOJ-19-0278, 19-0279, and 19-0280-F-000114

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) **BACK**

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit 71, in Cell b101
b7C
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness caused by lack of access to showers or clean clothing; and emotional and psychological distress.
- b. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3,

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: interruptions in medication meant to treat HIV, issues relating to my prostate and high blood pressure. Not being given my medication left me feeling anxious and scared about the way this disruption could exacerbate my pre-existing health issues. As a person with a disability and in a wheelchair, being on the 7th floor in a blackout with no functioning elevators and no accommodations left me fearful of what would happen in an emergency situation such as a fire.

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

07/18/2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, (b)(6); (b)(7)(C) authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

(b)(6); (b)(7)(C)

D.O.B:

(b)(6); (b)(7)(C)

AMERICAN OVERSIGHT

FIRST-CLASS



US POSTAGE

02 1P

0001202922

JUL 30 2019

MAILED FROM ZIP CODE 10020

\$ 000.65⁰

EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House

2nd & Chestnut St., 7th Floor

Philadelphia, PA 19106

2019-02980 119 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000119



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

August 12, 2019

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

Re: Administrative Tort Claim Received August 1, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-05861

Dear Ms. Rosenfeld:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn between January 27, 2019, and February 1, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

August 20, 2019

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

Re: Administrative Tort Claim Received August 12, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-06120

Dear Ms. (b)(6); (b)(7)(C)

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn between January 27, 2019, and February 3, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK
JESSICA CLARKE

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN

August 5, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: *Administrative Complaint by* (b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C) enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. Custom House, 7th Floor Philadelphia, PA			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. b)(6); (b)(7)(C) c/o Emery Celli Brinckerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, NY 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)		5. MARITAL STATUS Single	
6. DATE AND DAY OF ACCIDENT 01/27/2019 02/03/2019		7. TIME (A.M. OR P.M.) A.M.			
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). 					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). 					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Please see attached.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 1,000,000		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side) <i>Katherine Rosenfeld</i>			13b. PHONE NUMBER OF PERSON SIGNING FORM (212) 763-5000		14. DATE OF SIGNATURE <i>8/7/19</i>
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.) DATE RECEIVED FEDERAL BUREAU OF PRISONS		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046 REGIONAL COUNSEL OFFICE STANDARD FORM 95 (REV. 2/2007)

95-109

AUG 12 2019

PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

AMERICAN
OVERSIGHT

2019-02980 123 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000123

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

(b)(6); (b)(7)(C)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit 63, cell (b)(6); (b)(7)(C)
- c. In the five-day period between January 29, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.
- d. In addition to these facts, I also experienced the following circumstances between January 27, 2019 and February 3, 2019 while I was confined at MDC: [Example: unclean drinking water, broken toilet, rotting food] I was not given diabetic meds, hypertension meds, or pancreas meds. I was hospitalized due to the ill-treatment I received. I was in Kingsbrook Jewish Medical Center in Brooklyn and was released back to MDC where I was placed back into the same conditions during the blackout. I continued to be held in dark, cold conditions without medical attention or medications I needed. This persisted for 2 weeks after the blackout ended.

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

(b)(6), (b)(7)(C)

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness caused by lack of access to showers or clean clothing; and emotional and psychological distress.
- b. I suffer from pancreatitis and sleep apnea and during this period I was not provided with needed medical care. I was transferred from MDC to the ER for acute pancreatitis on January 24. I was discharged back to a cold, dark cell at MDC on January 29. Upon my discharge, I was supposed to have new lab work done and reviewed by medical staff, I was supposed to be on certain medication, including pain medication, Magnesium, and Potassium, and I was supposed to be fed a special diet. None of these things occurred. I also use a CPAP machine to manage my sleep apnea, but upon returning to MDC, I did not have a CPAP machine nor any way to use one if I did because of the power outage. As a result, I had difficulty sleeping through the night and then staying awake during the day.
- c. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3, 2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: [Examples: nightmares, anxiety, asthma symptoms, nausea, diabetes, etc.]

Depression, severe pain, PTSD, nightmares, anxiety. I suffered from severe pancreatic pain for a prolonged period after the blackout.

11. WITNESSES

The following people witnessed the circumstances that caused my injury:
[Provide name and address for each]

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

July 29, 2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, (b)(6); (b)(7)(C) authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely,

(b)(6); (b)(7)(C)

Name

DOB:

(b)(6); (b)(7)(C)

EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

FIRST-CLASS



02 1P
0001202922
MAILED FROM Z

2019-02980 128 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000128



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

October 4, 2019

Ms. Jean Prabhu
Burns & Harris Attorneys At Law
The Woolworth Building
233 Broadway, Suite 900
New York, NY 10279

Re: Administrative Tort Claim Received September 24, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-06542

Dear Ms. Prabhu:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury at MDC Brooklyn between January 27, 2019, and February 3, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

BURNS & HARRIS

ATTORNEYS AT LAW

SETH A. HARRIS

ALISON R. KEENAN
BLAKE G. GOLDFARB
SHERI E. HOLLAND

JUDITH F. STEPLER
JASON STEINBERG
ANDREW G. MEIER
STEPHEN S. LA ROCCA

JASON M. BATEMAN
CLIFFORD R. TUCKER
JOHNSON L. ATKINSON
MAX SILVERBERG
KARLISHA V. HEWITT

JEAN M. PRABHU
ALAN CHESTER SALZMAN
HARVEY WINER
JAMES K. GREENBERG
Of Counsel

August 6, 2019
DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL OFFICE

AUG 30 2019

NERO-PHILADELPHIA

VIA CERTIFIED MAIL/RRR

Federal Bureau of Prisons
Attn: Legal Department
Central Office HQ
320 First Street, NW
Washington, DC 20534

Re:

(b)(6); (b)(7)(C)

Supplemental Claim
Location: MDC Brooklyn
Dates of Incident: 1/27/19 – 2/03/19

To Whom It May Concern:

Please be advised that this firm represents the above-referenced claimant along with his prison ID, whom was in the custody of the MDC Brooklyn on January 27, 2019 through February 3, 2019 and suffered injuries based on violation of 42 USC 1983 of the Constitution of the United States, including but not limited to the Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution. On June 14, 2019, our office served upon you a claim on behalf of 37 claimants including the claimant listed above, and now serves this Supplemental Claim.

Upon information and belief, on January 27, 2019, an electrical fire broke out in MDC Brooklyn's west building causing damages to the building's infrastructure which significantly affected the prison's heating, venting, cooling, plumbing and electrical systems. The MDC Brooklyn and Warden Herman E. Quay failed to remedy those conditions for over a week and did not seek outside help or take measures to protect and ensure the safety of those in custody at the facility.

A humanitarian crisis unfolded as prisoners were subjected to inhumane conditions that posed unreasonable and substantial risks to their health and safety. The above claimant was deprived of basic human needs and any communication with the outside world, including but not limited to the following:

- Heating (in freezing temperatures)
- Suitable nutrition
- Electricity (kept in darkness)
- Flushable toilets/plumbing/showers
- drinking water
- Medical attention/medication
- Breathable air free from toxic fumes
- Access to clean clothes and bedding
- Excessive lockdown
- Extra blankets for warmth
- Communications with Counsel/family
- Administrative remedies



Wherefore, (b)(6); (b)(7)(C) sustained damages in excess of one million dollars
\$1,000,000.00.

Respectfully,

A handwritten signature in blue ink, appearing to be 'JP' followed by a stylized flourish.

JEAN PRABHU

JP/rb/enc.

AMERICAN
OVERSIGHT

2019-02980 132 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000132

FIRST CLASS

FIRST CLASS

FIRST CLASS

CERTIFIED MAIL



7019 1120 0000 5291 9036

958

First Class Mail

B BURNS & HARRIS
ATTORNEYS AT LAW
THE WOOLWORTH BUILDING
233 BROADWAY, SUITE 900
NEW YORK, NY 10279

Federal Bureau of Prisons
Attn: Legal Department
Central Office HQ
320 First Street, NW
Washington, DC 20534

205863





U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

*U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA 19106*

September 10, 2019

Ms. Jean Prabhu
Burns & Harris
The Woolworth Building
233 Broadway, Suite 900
New York, NY 10279

Re: Your Administrative Claims Received August 23, 2019

Dear Ms. Prabhu:

This will acknowledge receipt of the following administrative tort claims you filed on behalf of claimants seeking compensation for alleged personal injuries they suffered at the Metropolitan Detention Center in Brooklyn, New York:

(b)(6); (b)(7)(C)

Ms. Jean Prabhu
September 10, 2019
Page 2

(b)(6); (b)(7)(C)



Each claim provided a sum certain "in excess of one million dollars." However, pursuant to 28 C.F.R. § 14.2, each claim must seek a specific dollar amount when you file a claim. Accordingly, the claims are rejected at this time.

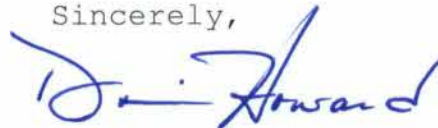
In addition, we will not be able to correspond with you unless you provide proof that you are authorized to represent each claimant as their legal representative. See 28 C.F.R. § 14.2.

If you wish these claims to be considered for administrative settlement, please re-submit the claim documents with the above-noted information. The enclosed Claim for Damage, Injury or Death form (SF-95) may be used in the instance of personal injury for each claim.

Lastly, please be advised that constitutional claims are not cognizable under the Federal Tort Claims Act.

All correspondence regarding these claims should be addressed to Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Street, Philadelphia, Pennsylvania 19106. If the circumstances surrounding these claims change in any fashion, you should contact this office immediately. Also, should your address change, you should advise this office accordingly.

Sincerely,



Darrin Howard
Regional Counsel

Enclosure

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☐ CIVILIAN	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. OR P.M.)	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights).		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).			13b. PHONE NUMBER OF PERSON SIGNING FORM	14. DATE OF SIGNATURE	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

95-109

AMERICAN
OVERSIGHT

2019-02980 135 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000135

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is **solely** for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

9/10/19 *multiple claims*

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY													
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature X ☐ Agent ☐ Addressee													
1. Article Addressed to:	B. Received by (Printed Name)	C. Date of Delivery												
Ms. Jean Prabhu Burns & Harris The Woolworth Building 233 Broadway, Suite 900 New York, NY 10279	D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☒ No													
2. Article Number (Transfer from service label)	3. Service Type <table border="0"> <tr> <td>☐ Adult Signature</td> <td>☐ Priority Mail Express®</td> </tr> <tr> <td>☐ Adult Signature Restricted Delivery</td> <td>☐ Registered Mail™</td> </tr> <tr> <td>☐ Certified Mail®</td> <td>☐ Registered Mail Restricted Delivery</td> </tr> <tr> <td>☒ Certified Mail Restricted Delivery</td> <td>☒ Return Receipt for Merchandise</td> </tr> <tr> <td>☐ Collect on Delivery</td> <td>☐ Signature Confirmation™</td> </tr> <tr> <td>☐ Collect on Delivery Restricted Delivery</td> <td>☐ Signature Confirmation Restricted Delivery</td> </tr> </table>		☐ Adult Signature	☐ Priority Mail Express®	☐ Adult Signature Restricted Delivery	☐ Registered Mail™	☐ Certified Mail®	☐ Registered Mail Restricted Delivery	☒ Certified Mail Restricted Delivery	☒ Return Receipt for Merchandise	☐ Collect on Delivery	☐ Signature Confirmation™	☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Adult Signature	☐ Priority Mail Express®													
☐ Adult Signature Restricted Delivery	☐ Registered Mail™													
☐ Certified Mail®	☐ Registered Mail Restricted Delivery													
☒ Certified Mail Restricted Delivery	☒ Return Receipt for Merchandise													
☐ Collect on Delivery	☐ Signature Confirmation™													
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery													
7013 0600 0001 9910 9338														

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt





SETH A. HARRIS

ALISON R. KEENAN
BLAKE G. GOLDFARB
SHERI E. HOLLAND

JUDITH F. STEMLER
JASON STEINBERG
ANDREW G. MEIER
STEPHEN S. LA ROCCA
IRWIN J. WEINSTEIN

JASON M. BATEMAN
JOHNSON L. ATKINSON
MAX SILVERBERG
KARLESHA V. HEWITT
FRANK L. LANZA

JEAN M. PRABHU
ALAN CHESTER SALZMAN
HARVEY WINER
JAMES K. GREENBERG
Of Counsel

September 19, 2019

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
RECEIVED OFFICE

SEP 24 2019

NERO-PHILADELPHIA

Federal Bureau of Prisons
Northeast Regional Office
Darrin Howard, Regional Counsel
US Custom House
2nd & Chestnut Streets, Room 701
Philadelphia, PA 19106

Re:

(b)(6); (b)(7)(C)

Claim No: TRT-NER-2019-06542

Dear Mr. Howard:

I am in receipt of your correspondence of September 10, 2019, and accordingly, have enclosed a copy of the above claimant's Retainer indicating Burns & Harris is his authorized representative for this claim.

The above claimant was in the custody of the MDC Brooklyn on January 27, 2019 through February 3, 2019 and suffered personal and emotional injuries based on the negligence and intentional infliction of physical and emotional injury at MDC Brooklyn and violation of 42 USC 1983 of the Constitution of the United States, including but not limited to the Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution. This is our third submission of this claim and have previously served notices dated June 14, 2019 and August 6, 2019.

Upon information and belief, on January 27, 2019, an electrical fire broke out in MDC Brooklyn's west building causing damages to the building's infrastructure which significantly affected the prison's heating, venting, cooling, plumbing and electrical systems. The MDC Brooklyn and Warden Herman E. Quay failed to remedy those conditions for over a week and did not seek outside help nor take measures to protect and ensure the safety of those in custody at the facility.

A humanitarian crisis unfolded as prisoners were subjected to inhumane conditions that caused unreasonable and substantial injury. The above claimant was deprived of basic human needs, medical attention, any communication with the outside world, and suffered personal and emotional injuries as a result.

Wherefore, the above claimant sustained damages in the amount of one million dollars \$1,000,000.00.

Respectfully,

JEAN PRABHU

JP/rb/Enc.

RETAINER AGREEMENT

TO: BURNS & HARRIS
233 Broadway, Suite 900
New York, NY 10279
(212) 393-1000

(b)(6); (b)(7)(C)

I, [REDACTED] (Client), the undersigned retains the law office of BURNS & HARRIS (law firm), as my attorneys to prosecute a claim for negligence against any and all parties, individuals and/or corporations that are found to be liable under the law for damages suffered by me arising from personal injury sustained by me. I [REDACTED] the spouse of [REDACTED]

(Client), retains the law office of BURNS & HARRIS (law firm) to represent me for a derivative cause of action for the loss of services and society of my spouse due to the injuries claimed as a result of the defendant(s) negligence. I(We) specifically agree as follows:

1. **FEE PERCENTAGE:** Although I have been advised of the right to retain the law firm under an arrangement whereby the firm would be compensated on the basis of the reasonable value of services rendered or on an hourly rate, I and the law firm agree that the law firm shall be paid Thirty Three and One-Third (33 1/3%) Percent of the sum recovered, whether by suit, settlement or otherwise. In computing the fee, the costs as taxed, including interest upon a judgment, shall be deemed part of the amount recovered. In litigating the claim, the law firm may become eligible for attorneys' fees under 42 U.S.C. § 1988. The Client agrees that any and all fees obtained by the law firm under 42 U.S.C. § 1988 are to be paid to the law firm in addition to the 33 1/3% of the sum recovered. If, as a result of the recovery obtained in your lawsuit brought by the law firm, a workers' compensation carrier waives any of its workers' compensation lien, then the law firm shall be entitled to recover from you an additional fee of 33 1/3% of the portion of the waiver that exceeds one third of the total lien amount owed.

2. **DISBURSEMENTS:** In the event there is no recovery, the Client shall not be obligated to pay the law firm a legal fee for services rendered. Disbursements may include some of the following expenses: court filing fees, sheriff fees, medical and hospital report/record fees, doctor's report, court stenographer fees, deposition costs, expert fees for expert depositions and court appearances, trial exhibits, computer on-line search fees, express mail, postage, photocopy charges, document management charges, long distance telephone charges, among other charges. Document management charges are the fees charged by the law firm for processing documents during litigation, such as medical records, documents produced by defendants(s) and/or other parties, etc. Processing of the documents may include but is not limited to the following: (1) scanning; (2) conversion of native files to PDF documents; (3) OCR (Optical Code Recognition); and/or (4) indexing. At the time of settlement and distribution of proceeds, if the law firm has advanced the disbursements, the law firm shall be reimbursed for all disbursements which shall be deducted from the recovery.

In the event that this firm has been retained by others having the same claim or a similar case, disbursements regarding the liability and/or damages of the defendants may be shared proportionately by all such plaintiffs.

The disbursements involved in prosecuting the case may be advanced by the Client or by the law firm. The Client may choose either option. If the Client elects to advance the money for disbursements (Option I), the Client must pay each disbursement as it is incurred. If the Client elects to have the law firm advance the money for Disbursements (Option II), at the end of each case, the law firm shall be reimbursed from the recovery for any disbursements the law firm advanced.

In the event the Client elects to advance the disbursements (Option I), at the time of the final settlement or distribution of judgment proceeds, these expenses shall be deducted prior to the computation of the Attorney's Fee. If there is no recovery, the law firm will have no responsibility to repay the client for case disbursements.

In the event the Client elects to have the law firm advance the disbursements (Option II), at the time of the final settlement or distribution of judgment proceeds, these expenses shall be deducted from the Client's share after the computation of the Attorney's Fee. If there is no recovery, or if the amount recovered is not sufficient to pay such disbursements in full, Client will not be responsible to pay such disbursements.

In the event no choice is selected by the Client, it will be assumed that the Client wishes to have the law firm advance all disbursements (Option II).

Option I

(initials) _____ I elect to advance the money for disbursements. I want to be billed for each disbursement as incurred. I understand that my immediate payment of such charges is required as many fees are tied to time-sensitive deadlines.

Option II (b)(6); (b)(7)(C)

(initials) _____ I elect to have the law firm advance the money for disbursements. I do not want to be billed for each disbursement as incurred. I agree that if there is a recovery of money on my case, the law firm will be reimbursed from that recovery for the costs and expenses advanced by the law firm. The Client hereby gives permission that the law firm may borrow monies from a third party for expenses and disbursements. Interest will then be charged to the Client as an additional expense.

3. **COMPUTATION OF FEES:** Under Option II, the contingency fee shall be computed on the gross recovery, resulting in a net settlement (or judgment), from which all appropriate disbursements in connection with the institution and prosecution of this claim are deducted, as set forth in paragraph 2 above. Under Option I, the contingency fee shall be computed on the net recovery after all appropriate disbursements in connection with the institution and prosecution of this claim are deducted, as set forth in paragraph 2 above. Examples of how a contingency fee is computed are as follows:

Option I

Client advances disbursements:

Gross Settlement	\$100.00
Disbursements	<u>- \$10.00</u>
Net settlement	\$90.00
33 1/3% Attorney's Fee	<u>\$30.00</u>
Net to Client	\$60.00

Option II

Law firm advances disbursements:

Gross Settlement	\$100.00
33 1/3% Attorney's Fee	<u>\$33.33</u>
Net settlement	\$66.67
Disbursements	<u>- \$10.00</u>
Net to Client	\$56.67

4. **MEDICAL BILLS:** All medical bills incurred which are not paid by the Client's medical insurance and are due and owing shall be chargeable to the Client's portion of the settlement. There may be additional deductions representing outstanding medical bills, liens to doctors for unpaid medical services rendered, or medical services not covered by medical insurance. The recovery of these medical services are included in the gross settlement and shall be paid from the Client's share of the recovery. Unpaid medical providers often will wait for payment until the conclusion of the case, however, in consideration for such abeyance, they will request a lien upon the settlement proceeds. The Client expressly authorizes the firm to sign such lien forms, which may be requested by physicians, and to directly pay outstanding medical bills for treatment to such physicians or other health care providers at the conclusion of the case. This authorization shall include medical and hospital expenses, and subrogation claims. The Client understands that medical providers do not provide medical services contingent upon the outcome of a case, and that in the event that there is no recovery, or an insufficient recovery, the Client will remain responsible for the payment of such medical bills.

5. **NO-FAULT PROCESSING FEE:** If this Retainer Agreement is entered for the processing of a claim for personal injuries arising from a motor vehicle accident wherein "No-Fault" insurance is applicable, it is agreed that the undersigned shall pay a fee of \$350.00 (Three Hundred Fifty Dollars) upon the successful conclusion of the case for the processing of statutory "No-Fault" benefits. This charge represents a lien on any proceeds of the case in favor of the attorney for professional services rendered in processing the "No-Fault" benefits.

6. **WITHDRAWALS:** The law firm expressly reserves the right to withdraw its representation at any time upon reasonable notification to the Client. In the event that the Client advises the law firm to discontinue the handling of this claim, or if the Client fails to cooperate with the law firm in the handling of this claim, Client agrees to compensate the law firm a reasonable amount for its services, and for the time spent on this claim on an hourly basis or under such other arrangement that may be agreed upon by the parties. The Client understands that the law firm has

conditionally accepted this case based upon the independent confirmation of all facts and injuries claimed to have been sustained by Client. In the event that the Client desires to transfer the file from this office, the Client shall be responsible to compensate the law firm for the reasonable value of their services. Such transfer shall not include documents or attorney work product regarding the general liability of the defendants.

7. **APPEALS:** Client further understands that the services to be provided through this agreement will NOT extend through the prosecution/defense of an appeal or representation on an appeal brought by any of the parties to the lawsuit. Client understands that BURNS & HARRIS, ESQS. may charge reasonable additional compensation if the case is appealed, or it is necessary to try the case more than once, the amount of which shall be an additional ten (10%) percent – totaling forty-three and one-third percent (43 1/3%) – of the sum recovered in negligence, intentional tort, civil rights and legal malpractice cases. Should attorney's fees under 42 USC § 1988 be awarded and an appeal be prosecuted pursuant to this section the firm may elect either 42 USC § 1988 fees or a 10% fee pursuant to this section but not both.

This further appellate representation will not require a new Fee Agreement. In the event the CLIENT's case is dismissed or an unfavorable verdict is rendered, the CLIENT agrees that BURNS & HARRIS, ESQS. reserves the right to decide whether or not to prosecute an appeal. If BURNS & HARRIS, ESQS. declines to prosecute an appeal, and appeal is taken, and at any point in the appeal process there is an eventual recovery made in the case on behalf of the CLIENT, BURNS & HARRIS, ESQS. will be entitled to a fee that represents the fair value of the services rendered. BURNS & HARRIS, ESQS. shall have the first right of selecting the basis of their fee in the first instance, and if BURNS & HARRIS, ESQS. elects to be paid on an hourly rate, they shall be paid based on an hourly rate of six hundred dollars an hour (\$ 600/hour) for all work performed by BURNS & HARRIS, ESQS., and their agents/servants/employees. Unless otherwise stated in writing, BURNS & HARRIS, ESQS., elects to be paid on a contingent fee

(b)(6); (b)(7)(C)

(initials)

8. **SURROGATES COURT PROCEEDINGS:** If the law firm decides to handle Surrogate's Court work and the client agrees, the firm may hire a Surrogate Court attorney and to take fees from the client's share of the recovery. The establishment of a trust may be performed at an extra expense to the client. The client may consult with an elder lawyer, wills or trusts attorney at their own expense.

9. **STATUTE OF LIMITATIONS:** I understand that the Statute of Limitations period for my case must be investigated and that this Agreement is made subject to that investigation as well as an investigation of my entire case.

10. **FINANCING OF CASE:** If the firm borrows money from any lending institution to finance the cost of the Client's case, the amounts advanced by this firm to pay the cost of prosecuting or defending a claim or action or otherwise protecting or promoting the Client's interest will bear interest at the highest lawful rate allowed by applicable law. In no event will the interest be greater than the amount paid by the firm to the lending institution.

11. RESULTS NOT GUARANTEED: No attorney can accurately predict the outcome of any legal matter, accordingly, no representations are made, either expressly or impliedly, as to the final outcome of this matter. I further understand that I must immediately report any changes in my residence, telephone number or health to the law firm. I understand that this Retainer Agreement is a binding legal contract. I expressly agree that I will fully and freely cooperate with my attorneys in all aspects required for the prosecution of this legal matter and that I

(b)(6); (b)(7)(C)

to actions that frustrate or impair the success of this action.

(initials)

12. APPROVAL NECESSARY FOR SETTLEMENT: Attorneys are hereby granted a power of attorney so that they may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to conclude this representation, including settlement and/or reducing to possession any and all monies or other things of value due to the Client under the claim as fully as the Client could do so in person. Attorneys are also authorized and empowered to act as Client's negotiator in any and all negotiations concerning the subject of this Agreement.

13. ASSOCIATION OF OTHER ATTORNEYS: Attorneys may, at their own expense, use or associate other attorneys in the representation of the aforesaid claims of the Client. Client understands that *the firm*, Seth A. Harris PLLC d/b/a Burns & Harris, is a professional limited liability company under the laws of New York with a number of attorneys. Various firm attorneys may work on Client's case.

14. ASSOCIATE COUNSEL: Attorneys may participate in the division of fees in this case and assume joint responsibility for the representation of the Client either in the event that the Attorney retains associate counsel or that the Client later chooses new counsel, provided that the total fee to the Client does not increase as a result of the division of fees and that the attorneys involved have agreed to the division of fees and assumption of joint responsibility.

15. FEE DISPUTES: In case of a fee dispute, the undersigned may be entitled to arbitration, if the fee falls within the parameters of the Fee Dispute Resolution Program, pursuant to 22 N.Y.C.R.R. PART 137 of the New York State Court Rules.

16. COLLECTION WORK: All work required to prosecute a collection case to recover an award will not be covered by this Agreement.

17. NEW YORK LAW TO APPLY: This Agreement shall be construed under and in accordance with the laws of the State of New York and the rights, duties and obligations of Client and of Attorneys regarding Attorney's representation of Client and regarding anything covered by this Agreement shall be governed by the laws of the State of New York.

18. PARTIES BOUND: This Agreement shall be binding upon and inure to the benefit of the parties, hereto, and their respective heirs, executors, administrators, legal representative, successors, guardians and assigns.

19. LEGAL CONSTRUCTION: In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such

invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

20. PRIOR AGREEMENTS SUPERSEDED: This Agreement constitutes the sole and only Agreement of the parties hereto and supersedes any prior understanding or written or oral agreement between the parties respecting the within subject matter.

I certify and acknowledge that I have had the opportunity to read this Agreement and have answered any questions pertaining thereto. I further state that I have voluntarily entered into this Agreement fully aware of the terms and conditions.

DATED: Feb 21, 2015

(b)(6); (b)(7)(C)

(L.S.)

Witness: _____

(L.S.)

Express

RT 494

FZ

1

16:30

A

0640
09.24

ORIGIN ID: PCTA (212) 393-1000
RENEE BIEN-AIME
BURNS & HARRIS
233 BROADWAY, SUITE 900

NEW YORK, NY 10279
UNITED STATES US

SHIP DATE: 20SEP19
ACTWGT: 4.00 LB
CAD: 108136325/INET4160

BILL SENDER

TO DARRIN HOWARD, REGIONAL COUNSEL
FEDERAL BUREAU OF PRISONS
US CUSTOM HOUSE
2ND & CHESTNUT STREETS, ROOM 701
PHILADELPHIA PA 19106

(215) 521-7301
INV
PO

REF: MDC BROOKLYN 005863

DEPT:



FedEx
Express



WED - 25 SEP 4:30P
EXPRESS SAVER

TRK# 7762 9501 0640
0201

SB BBXA

19106
PA-US PHL



5671190040542

ak



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

August 2, 2019

Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020
Attn: Katherine Rosenfeld, Esq.

Re: Administrative Tort Claim Received July 29, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-05818

Dear Ms. Rosenfeld:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn January 27, 2019, through February 3, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK
JESSICA CLARKE

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN

July 24, 2019

By U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: *Administrative Complaint by* (b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C) enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

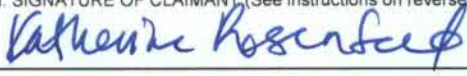
If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. Custom House, 7th Floor Philadelphia, PA			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. b)(6); (b)(7)(C) c/o Emery Celli Brinckerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, NY 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☐ CIVILIAN		4. DATE OF BIRTH b)(6); (b)(7)(C)		5. MARITAL STATUS Single	
6. DATE AND DAY OF ACCIDENT 01/27/2019		7. TIME (A.M. OR P.M.) 02/03/2019 A.M.			
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). 					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). 					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Please see attached.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
[REDACTED]		Unknown			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 1,000,000		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM (212) 763-5000		14. DATE OF SIGNATURE 7/24/19
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.) DATE RECEIVED FEDERAL BUREAU OF PRISONS REGIONAL COUNSEL OFFICE		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

JUL 29 2019

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

95-109
AMERICAN
OVERSIGHT

2019-02980 149 of 227

PHILADELPHIA
DOJ-19-0278, 19-0279, and 19-0280-F-000149

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code) ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.
C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

(b)(6), (b)(7)(C)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit 62, cell (b)(6), (b)(7)(C).
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.
- d. In addition to these facts, I also experienced the following circumstances between January 27, 2019 and February 3, 2019 while I was confined at MDC: [Example: unclean drinking water, broken toilet, rotting food]

*Was also Confined in our Cell With a toilet
that couldnt flush, had to smell our
own urine & feces for the duration of
the outage.*

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

(b)(6); (b)(7)(C)

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness caused by lack of access to showers or clean clothing; and emotional and psychological distress.
- b. I suffer from sleep apnea and during this period I was not provided with needed medical care. Specifically, I was not provided with a functioning CPAP machine. Because untreated sleep apnea causes me to choke and stop breathing when I sleep, I was not able to sleep through the night. As a result, I was exhausted, irritable, and terrified of dying in my sleep from a lack of oxygen.
- c. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3, 2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: [Examples: nightmares, anxiety, asthma symptoms, nausea, diabetes, etc.]

I have Type 2 Diabetes and Cause of the power outage I was not able to get on the computer to order my meds. in addition to, there were no regular pill line delivery of meds as well.

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

(b)(6); (b)(7)(C)

11. WITNESSES

The following people witnessed the circumstances that caused my injury:
[Provide name and address for each]

(b)(6); (b)(7)(C)

(cellmate)

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

June 28, 2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, (b)(6); (b)(7)(C) authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely,

(b)(6); (b)(7)(C)

Name:

Date of Birth:

(b)(6); (b)(7)(C)



EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House

2nd & Chestnut St., 7th Floor

Philadelphia, PA 19106

FIRST-CLASS



2019-02980 155 of 227
DOJ-19-0278, 19-0279, and 19-0280-F-000155

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN

September 5, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: *Administrative Complaint by* (b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C), enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

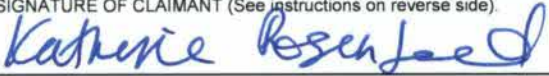
If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. CUSTOM HOUSE, 7TH FLOOR PHILADELPHIA, PA 19106			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) /o Emery Celli Brickerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, New York 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 01/27/2019 02/03/2019	
7. TIME (A.M. OR P.M.) A.M.					
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). 					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). 					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. SEP 10 2019 NERO-PHILADELPHIA					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
CELLMATE #1		UNKNOWN			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 1,000,000		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM 212-763-5066		14. DATE OF SIGNATURE 9/4/19
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

95-109

AMERICAN
OVERSIGHT

2019-02980 157 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000157

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit I63, Cell b6
b7C
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness caused by lack of access to showers or clean clothing; and emotional and psychological distress.
- b. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3,

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: nightmares, claustrophobia, congestion, anxiety, headaches, depression, and insomnia. I was forced to drink dirty, brown water from the sink in my cell because that was the only water available to us.

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

08/ 19 /2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, (b)(6); (b)(7)(C) authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely,

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

D.O.B:

(b)(6); (b)(7)(C)

AMERICAN OVERSIGHT

FIRST-CLASS



US POSTAGE

\$ 000.65⁰

02 1P

0001202922

SEP 05 2019

MAILED FROM ZIP CODE 10020

EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

2019-02980 162 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000162



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

September 17, 2019

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

Re: Administrative Tort Claim Received September 10, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-06804

Dear Ms. Rosenfeld:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn between January 27, 2019, and February 3, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

DARRIN HOWARD, ESQ.
NORTHEAST REGIONAL COUNSEL
U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
NORTHEAST REGIONAL OFFICE
200 CHESTNUT STREET
PHILADELPHIA, PENNSYLVANIA 19106

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

MAR 11 2019

NERO-PHILADELPHIA

Re: Administrative Tort Claim for Personal Injury [28 U.S.C. 2671, et. seq.]

Dear Mr. Howard:

The undersigned Claimant respectfully submits this claim under the Federal Tort Claims Act ("FTCA") [28 U.S.C. 2672], and 28 C.F.R. 543.30, seeking compensatory damages in the amount of \$100,000.00 for personal injury that he suffered as a result of negligence by Federal Bureau of Prisons staff at the Metropolitan Detention Center ("MDC") in Brooklyn, New York. For the reasons that follow, this claim should be promptly settled.

I. THE RELEVANT FACTS.

At all times between January 27, 2019 and February 3, 2019, claimant was detained at the MDC (West Building). On January 27, 2019, the institution experienced a power outage which, upon information and belief, resulted from an electrical fire. Upon information and belief, the power outage adversely affected the institution's heating, hot water, and lighting. More specifically, each cell (including claimant's assigned cell) was without lights, hot water, or heat for the approximately eight days (i.e. January 27, 2019 thru February 3, 2019). Staff was aware of the inhumane conditions, and took no steps to immediately restore the housing units or the cells within those units to habitable conditions.

Notably, however, on February 3, 2019, staff began distributing extra blankets to inmates in the institution in an effort to combat the exceptionally frigid temperatures. It should also be noted that during this period, institutional staff would visit housing units to check the cell temperatures. Some inmates blocked their ventilation ducts in an effort to prevent the exceptionally cold air from entering their cells through the ventilation system. This, however, also prevented staff from obtaining an accurate electronic reading of the temperature in those cells which had their vents blocked. Thus, on at least two occasions, staff entered the housing unit and presented to a particular cell where the air vent had been blocked, and recorded a temperature reading that was much warmer than the temperature in other cells where inmates had not blocked their air vents.

Throughout the period where claimant was denied suitable quarters, heat, hot water, and lights, he feared for his physical safety. He feared possible assault on his person by other inmates assigned to his housing unit. Despite inadequate lighting in the housing units, from on or about January 28, 2019 thru February 1, 2019, claimant and more than 100 other inmates assigned to his housing unit were permitted (and even required) to exit and remain outside of their respective cells for extended periods of times throughout the day and evening, supervised by only a single staff member who was physically unable to observe inmate activity throughout the unit due to extremely limited lighting in the common area. Claimant was required to exit his cell and enter the common area to obtain and consume his meals, as well as to shower. It should also be noted that during the institutional crisis, mental health staff was inaccessible to claimant and all other inmates assigned to his housing unit. This claimant was also not afforded an opportunity to meet with medical staff. All access to claimant's attorney was denied as attorneys were not permitted to enter the institution, and both the inmate telephone and email systems were not operational. Inmates were also denied a meaningful opportunity to send general correspondence since they were denied access to commissary to purchase required postage.

Again, despite the magnitude of the inhumane crisis, MDC staff took no immediate or appropriate action to restore the institution to normal operations, or to adhere to their responsibility to provide Claimant with appropriate housing.

During this crisis period claimant suffered severe emotional distress which affected, inter alia, claimant's ability to sleep and focus.

II. THE RELEVANT LAW.

(a) Liability Under The Federal Tort Claims Act.

The Federal Tort Claims Act ("FTCA") provides that the United States is liable for injury caused by the negligence

of its employees under circumstances where a private person would be liable according to "the laws of the place where the act or omission occurred," and thus New York law applies. {28 U.S.C. 1346(b); Kane v. United States, 189 F.Supp.2d 40, 51-52 (S.D.N.Y. 2002); Ducrepin v. United States, 964 F.Supp. 659, 663 (E.D.N.Y. 1997)} Under New York law, to prove a claim of negligence, plaintiff must establish three elements: (i) defendant owed plaintiff a duty of care; (ii) defendant breached that duty; and (iii) the breach proximately caused plaintiff's injury. {Kane, 189 F.Supp.2d at 51-52}

(b) The Bureau of Prisons Owed Claimant a Duty of Care.

Although state laws sets out the elements required to prove negligence, the standard of care for the Federal Bureau of Prisons is "fixed by 18 U.S.C. 4042, independent of [any] inconsistent state rule" allowing for a local jailor's immunity from suit, or a lesser duty. {United States v. Muniz, 374 U.S. 150, 164 (1963)} Section 4042(a) requires that the Bureau of Prisons provide "suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States." {18 U.S.C. 4042(a)(2)} This statutory duty means that the Bureau of Prisons must exercise "ordinary diligence" or reasonable care "to keep prisoners safe and free from harm." {Coward v. United States, 617 F.2d 112, 116 (5th Cir. 1980); see also Herrington v. United States, 1984 WL 1279, at *2 (S.D.N.Y. 1984); Castor v. United States, 883 F.Supp. 344, 350 (S.D. Ind. 1995)}

It is clear that "the mere failure to provide suitable quarters" is not actionable; there must be fault. {Muhammed v. United States, 6 F.Supp.2d 582, 595 (N.D. Tex. 1998)} Only "a failure to exercise ordinary care, or reasonable care, to provide suitable quarters" is actionable. {Id.; Graham v. United States, 2002 WL 188573, at *4 (E.D. Pa. 2002)(noting that mandatory duty of care set forth in Section 4042 "does not dictate the manner in which the duty must be fulfilled")}

(c) New York Law Governing Claims Negligent Infliction of Emotional Distress.

Under New York law, a claim of negligent infliction of emotional distress must be premised upon a breach of a duty owed "which either unreasonably endangers the plaintiff's physical safety, or causes the plaintiff to fear for his or her own safety." {Sheila C. v. Povich, 11 A.D.3d 120, 130 (1st Dep't 2004); see also Mortise v. United States, 102 F.3d 693, 696 (2d Cir. 1996)} Under New York law, a plaintiff may establish a claim of negligent infliction of emotion distress in one of two ways: (1) the "bystander" theory; or (2) the "direct duty theory." A plaintiff may recover for purely emotional injury under the "direct duty theory" when he/she suffers an emotional injury from defendant's breach of a duty which unreasonably endangers his/her own physical safety. {See, Mortise, 102 F.3d at 696 (citing Kennedy v. McKesson Co., 58 N.Y.2d 500, 504 (1983))} The duty in such cases must be specific to the plaintiff, and not some amorphous, free-floating duty to society. {Id.; (citing Johnson v. Jamaica Hosp., 62 N.Y.2d 523, 526-27 (1984))}

As noted, the Federal Bureau of Prisons owed claimant a specific duty of care, as described in Section 4042(a)(2) and (3), to provide him "suitable quarters," "safekeeping," and "protection."

III. APPLICATION OF THE LAW TO THE FACTS.

The facts and the law are relatively straightforward: On January 27, 2019, MDC Brooklyn experienced a significant power outage that adversely affected all housing units within its West Building. The outage rendered all cells (including claimant's) within the West Building uninhabitable by virtue of no lighting, heating, or hot water. MDC staff failed to take immediate steps to rectify the power outage or to restore the institutional to normal operations, as a result of being left in such inhumane and exceptionally dangerous conditions, claimant feared for his personal safety and life.

It goes without saying that the Federal Bureau of Prisons, in keeping with its mandated duty under Section 4042(a) (2) and (3), is required to provide "adequate heat" to all cells and housing units wherein prisoners will be confined. {See, Dugan v. Washington, 2001 WL 741626, at *5 (N.D. Ill. June 11, 2001)(noting that prisoners need only be provided "adequate heat") That duty is specific. The duty to provide "safekeeping" and "protection" is also specific. {See, 18 U.S.C. 4042 (a)(2) and (3)} Each of those specific duties were breached when MDC staff failed to take steps to immediately rectify the power outage, resulting in approximately eight continuous days of fear of physical injury.

Bureau of Prisons employee's negligence in this matter is both inexplicable and unacceptable. Indeed, the failure to act reasonably has prompted investigations from the Office of the Inspectors General, as well as others. Given the indisputable facts, and well settled law, claimant is entitled to compensatory damages in the amount of \$100,000.00.

IV. CONCLUSION.

For the reasons stated, claimant seeks prompt disposition and settlement of this claim.

Dated: Brooklyn, New York

February 4, 2019

Respectfully submitted,

(b)(6); (b)(7)(C)

[SIGNATURE]

(b)(6); (b)(7)(C)

[PRINT NAME]

(b)(6); (b)(7)(C)

[REGISTER NUMBER]

METROPOLITAN DETENTION CENTER
P.O. BOX 329002
BROOKLYN, NEW YORK 11232

— CLAIMANT —

cc: U.S. Department of Justice
Office of the Inspector General

Federal Bureau of Prisons
Central Office
320 First Street, NW
Washington, DC 20534

New York Times (w/ecnl.)

New York Federal Defenders

Im Dc Brooklyn
metro politan Detention center
P.O. Box 329002
Brooklyn N.Y 11232

NEW YORK, NY 100
407 MAR 2019 PM 11 L



Darkin Howard, ASQ.

northeast Regional counsel
U.S. Department of Justice
Federal Bureau of Prisons
northeast Regional office
200 Chestnut Street

Philadelphia Pennsylvania 19106
19106-257555



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA 19106

March 21, 2019

(b)(6); (b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

RE: Administrative Claim No. TRT-NER-2019-03039
Claim Received March 11, 2019

Dear Mr. (b)(6); (b)(7)(C)

This is in response to your administrative tort claim in which you seek \$100,000.00 in compensation for an alleged personal injury sustained at MDC Brooklyn between January 27, 2019, and February 3, 2019. Specifically, you state a power outage adversely affected the institution's heating, hot water, and lighting. You allege you suffered severe emotional distress, which affected your ability to sleep and focus. You contend you feared for your physical safety and possible assault.

After review, we have decided to deny your claim because you have not alleged an identifiable physical injury actionable under the Federal Tort Claims Act. 28 U.S.C. §§ 1346(b)(2), 2672.

If you are dissatisfied with this decision, you may bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,

Darrin Howard
Regional Counsel

cc: H. Quay, Warden, MDC Brooklyn

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece,

1.

(b)(6);
(b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232



9590 9402 4542 8278 8148 76

2. Article Number (Transfer from service label)

UNT NEK 2019 03039

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

is different from item 1? ☐ Yes
every address below: ☒ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®

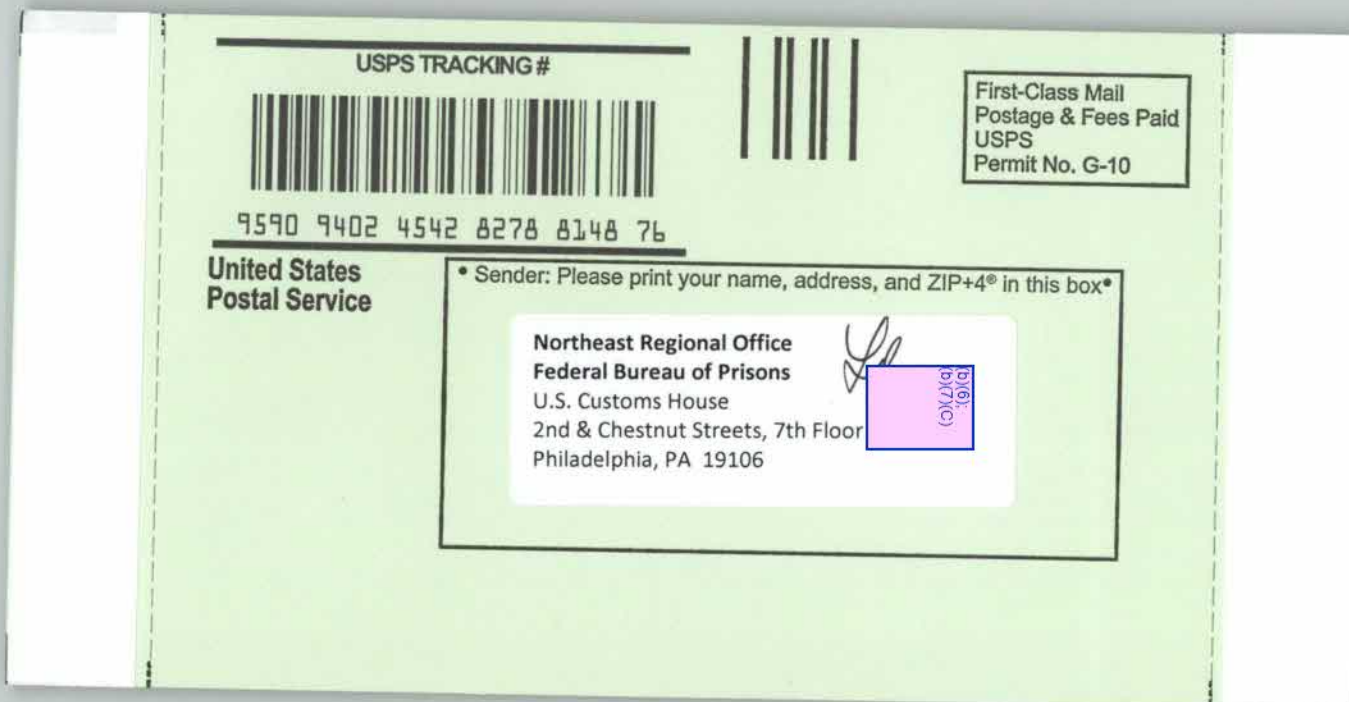
- ☒ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery

- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt





U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

*U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106*

September 17, 2019

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

Re: Administrative Tort Claim Received September 10, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-06799

Dear Ms. (b)(6); (b)(7)(C)

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn between January 27, 2019, and February 3, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN

September 5, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: Administrative Complaint by (b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C) enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

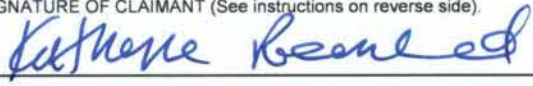
If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. CUSTOM HOUSE, 7TH FLOOR PHILADELPHIA, PA 19106			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) c/o Emery Celli Brickerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, New York 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 01/27/2019 02/03/2019	
7. TIME (A.M. OR P.M.) A.M.					
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
DATE RECEIVED FEDERAL BUREAU OF PRISONS REGIONAL COUNSEL OFFICE SEP 10 2019 NERO-PHILADELPHIA					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
CELLMATE #1		UNKNOWN			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 1,000,000		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM 212-763-5066		14. DATE OF SIGNATURE 9/4/19
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

95-109
AMERICAN
OVERSIGHT

2019-02980 173 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000173

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

- A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit I62, Cell REDACTED
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness caused by lack of access to showers or clean clothing; and emotional and psychological distress.
- b. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3,

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: claustrophobia, cold sweats, congestion, chest pain, anxiety, depression and nausea. Since the blackout, I become extremely anxious whenever the lights flicker, fearful that I will again be locked in a freezing cell for days on end. The toilet in my cell was shut off and meals were never delivered on several occasions.

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

08/ 19 /2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, (b)(6); (b)(7)(C) authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely, 

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

D.O.B: (b)(6); (b)(7)(C)

EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

FIRST-CLASS



PITNEY BOWES
02 1P
0001202922
MAILED FROM IP



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

*U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106*

November 12, 2019

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

Re: Administrative Tort Claim Received November 4, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2020-00953

Dear Ms. Rosenfeld:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn between January 27, 2019, and February 3, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
HARVEY PRAGER
SCOUT KATOVICH

October 29, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: *Administrative Complaint by* [REDACTED]

To Whom It May Concern:

On behalf of [REDACTED], enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. Custom House, 7th Floor Philadelphia, PA			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) /o Emery Celli Brinckerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, NY 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)		5. MARITAL STATUS Single	
6. DATE AND DAY OF ACCIDENT 01/27/2019		7. TIME (A.M. OR P.M.) A.M.		8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.	
PROPERTY DAMAGE					
9. NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
PERSONAL INJURY/WRONGFUL DEATH					
10. STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Please see attached.					
WITNESSES					
11. NAME			ADDRESS (Number, Street, City, State, and Zip Code)		
AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 1,000,000		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM (212) 763-5066		14. DATE OF SIGNATURE
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE
NOV 04 2019
NERO-PHILADELPHIA

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.
C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit K84.
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures and/or extreme temperature variations without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.
- d. In addition to these facts, I also experienced the following circumstances between January 27, 2019 and February 3, 2019 while I was confined at MDC: I was in complete darkness where I was unable to read or write. Not having light triggered several anxiety attacks. The panic buttons were inoperable. I was not provided with basic hygiene items such as soap, toothpaste, toothbrush or toilet paper. I was forced to use old rags in place of toilet paper for two days. There was no heat and I was not provided additional clothing, blankets or sheets to remedy the extreme cold. I did not have access to the laundry facilities. The showers were extremely cold; I attempted to shower in the freezing water and caught the flu. My medical requests were ignored and was unable to pursue administrative remedies.

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold, and/or extreme temperature variations, and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness cause by lack of access to showers of clean clothing; and emotional and psychological distress.
- b. I suffer from depression and caught the flu during the blackout and was not provided with mirtazapine and medication for the flu. I was given Pepto chews for my coughing and throwing up but nothing for the flu.
- c. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3, 2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: anxiety, nightmares, cold sweats, coughing/sneezing, chest pain, headaches, nausea, lightheadedness, PTSD, severe stress. I was not able to think clearly and could not remember days of the week and had forgotten when to take the medication sometimes resulting in a double dosages. I lost weight and had a weakened immune system.

11. WITNESSES

The following people witnessed the circumstances that caused my injury:
Cellmate.

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

September 26, 2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, (b)(6); (b)(7)(C) authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely,

(b)(6); (b)(7)(C)

DOB: (b)(6); (b)(7)(C)

EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

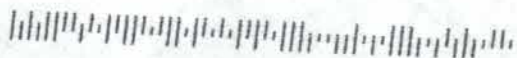
U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

FIRST-CLASS



2019-02980 186 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000186



CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C)		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☐ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)		5. MARITAL STATUS Single	
6. DATE AND DAY OF ACCIDENT January 26 - February 3, 2019		7. TIME (A.M. OR P.M.) 24 hour lockdown			
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). For 8 days, I was subjected to inhumane conditions at Brooklyn MDC. I want \$250,000 for my pain & suffering. From late January thru February 3, 2019, I was locked in a freezing cold cell (24 hours per day) without, heat, power, phone access, email, hot food, or showers. I was deprived access to my legal team. The temperatures were sub-freezing.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. I was so cold during that experience that I thought I would freeze to death. A lawsuit to was filed by the Federal Defenders of NY detailing first-hand accounts of the conditions & the facility cover-ups.					
11. WITNESSES					
NAME			ADDRESS (Number, Street, City, State, and Zip Code)		
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 250,000		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 250,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
(b)(6); (b)(7)(C)			13b. PHONE NUMBER OF PERSON SIGNING FORM (b)(6); (b)(7)(C)		14. DATE OF SIGNATURE 8/8/2018
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.) DATE RECEIVED FEDERAL BUREAU OF PRISONS REGIONAL COUNSEL OFFICE		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

SEP 12 2019

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

AMERICAN
OVERSIGHT

2019-02980 187 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000187

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☒ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

- A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
 C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
 D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) Metropolitan Detention Center P.O. Box 329 002 Brooklyn NY 11232		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☐ CIVILIAN	4. DATE OF BIRTH (b)(6); (b)(7)(C)	5. MARITAL STATUS single	6. DATE AND DAY OF ACCIDENT 1-26-2019 → 2-3-2019	7. TIME (A.M. OR P.M.) 24 hours	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). From 1-26-2019 thru 2-3-2019 - I was deprived electricity, heat, contact to family, hot meals, hot water, showers + limited toilet service - all with <u>no heat</u> during the coldest 8 days this winter. I was locked in my cell for 8 days with no heat + average temperature of 35 degrees. No extra blankets were given until day 8. No heat, power or hot water was available + reduced meal service included 2 full days of no meal/food service					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). NONE					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). NONE					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. I continue to experience severe anxiety every time they lock me in my room. When they turn off the toilets - I still have stress about not flushing for a day again. I have not been able to sleep regularly since the horrible experience.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
Federal Judge Torres		US District Courthouse 225 Cadman Plaza East Brooklyn NY 11201			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE NONE	12b. PERSONAL INJURY 250,000	12c. WRONGFUL DEATH NONE	12d. TOTAL (Failure to specify may cause forfeiture of your rights). 250,000		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13. (b)(6); (b)(7)(C) (See instructions on reverse side).		13b. PHONE NUMBER OF PERSON SIGNING FORM N/A		14. DATE OF SIGNATURE 4/1/2019	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.) DATE RECEIVED FEDERAL BUREAU OF PRISONS REGIONAL COUNSEL OFFICE		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

APR 8 2019

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

95-109
AMERICAN
OVERSIGHT

2019-02980 189 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000189

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

*U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106*

April 16, 2019

(b)(6); (b)(7)(C)

MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

Re: Administrative Claim **Received April 8, 2019**
Claim No. TRT-NER-2019-03660

Dear Mr. (b)(6); (b)(7)(C)

This will acknowledge receipt of your administrative claim for an alleged loss of personal property or personal injury suffered at MDC Brooklyn.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim.

All correspondence regarding this claim should be addressed to Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Street, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact this office immediately. Also, should your address change, you should contact this office in writing accordingly.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA 19106

October 7, 2019

Mr. (b)(6); (b)(7)(C)
MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

RE: Administrative Claim No. TRT-NER-2019-03660

Dear Mr. (b)(6); (b)(7)(C)

Administrative Claim No. TRT-NER-2019-03660, properly received in this office on April 8, 2019, has been accepted and considered for settlement as provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2672, under authority delegated to me by 28 C.F.R. § 543.30. You seek \$250,000.00 in compensation for an alleged personal injury sustained at MDC Brooklyn between January 27, 2019, and February 3, 2019. Specifically, you state a power outage adversely affected the institution's heating, hot water, meals and lighting. You contend you suffer from severe anxiety and lack of sleep.

An investigation, including a review of your medical records, reveals you did not seek medical attention from Health Services for medical care as it relates to the power outage. You have not alleged an identifiable physical injury actionable under the Federal Tort Claims Act 28 U.S.C. §§ 1346(b)(2), 2672. There is no evidence you experienced a compensable loss as the result of negligence on the part of any Bureau of Prisons employee. Accordingly, your claim is denied.

If you are dissatisfied with this decision, you may bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,

Darrin Howard
Regional Counsel

cc: D. Edge, Warden, MDC Brooklyn

NUMBER 2019 03660

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. [REDACTED]
MDC Brooklyn
P.O. Box 329002
Brooklyn, NY 11232

(b)(6); (b)(7)(C)

2. Tracking Number (Transfer from service label)

7016 1370 0001 4120 2168

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

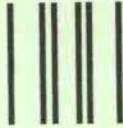
PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

USPS TRACKING#



9590 9402 4990 9063 5105 18



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Northeast Regional Office
Federal Bureau of Prisons
U.S. Customs House
2nd & Chestnut Streets, 7th Floor
Philadelphia, PA 19106


(b)(6); (b)(7)(C)



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

July 23, 2019

Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020
Attn: Katherine Rosenfeld, Esq.

Re: Administrative Tort Claim Received July 19, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-05595

Dear Ms. Rosenfeld:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn January 27, 2019, through February 1, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

CHARLES J. OGLETREE, JR.
EMERITUS

DIANE L. HOUK
JESSICA CLARKE

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN

July 16, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: *Administrative Complaint by* (b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C) enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

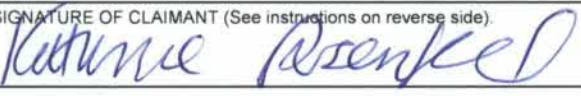
If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. Custom House, 7th Floor Philadelphia, PA			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) c/o Emery Celli Brinckerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, NY 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☐ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)		5. MARITAL STATUS Single	
6. DATE AND DAY OF ACCIDENT 01/27/2019		7. TIME (A.M. OR P.M.) 02/01/2019		A.M.	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Please see attached.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
(b)(6); (b)(7)(C) Previous Cellmate (b)(6); (b)(7)(C)		Unknown Brooklyn MDC Danbury FCI			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY		12c. WRONGFUL DEATH	
1,000,000		1,000,000		1,000,000	
12d. TOTAL (Failure to specify may cause forfeiture of your rights).					
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM (212) 763-5000		14. DATE OF SIGNATURE 07/16/2019
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.) DATE RECEIVED FEDERAL BUREAU OF PRISONS REGIONAL COURSE OFFICE		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

JUL 19 2019

AMERICAN
OVERSIGHT

2019-02980 197 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000197

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

- A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

(b)(6); (b)(7)(C)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit I63, cell (b)(6); (b)(7)(C).
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.
- d. In addition to these facts, I also experienced the following circumstances between January 27, 2019 and February 3, 2019 while I was confined at MDC: [Example: unclean drinking water, broken toilet, rotting food]

Pepper spray was used for a cell extraction in my unit, and the spray entered our cells where we were confined on lockdown with no way to escape the noxious air

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

(b)(6); (b)(7)(C)

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness caused by lack of access to showers or clean clothing; and emotional and psychological distress.
- b. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3, 2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: [Examples: nightmares, anxiety, asthma symptoms, nausea, diabetes, etc.]

Anxiety from being told this would last at least a month of same conditions;

11. WITNESSES

The following people witnessed the circumstances that caused my injury:
[Provide name and address for each]

(b)(6); (b)(7)(C) (cellmate) (b)(6); (b)(7)(C) : I63 Prisoners from 1/27/2019 thru 2/3/2019:

(b)(6); (b)(7)(C)

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

William Kenney

(b)(6); (b)(7)(C)

3 Russian

Guys Whose Names I Do Not Know-Good Guys; Plenty of First Names But Not
Last Names

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

June 28, 2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, (b)(6); (b)(7)(C) authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely,

Name:

(b)(6); (b)(7)(C)

Date of Birth:

(b)(6); (b)(7)(C)

EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

FIRST-CLASS



PITNEY BOWES
US POST
02 1P
0001202922
MAILED FROM ZIP CODE
\$ 000.00

2019-02980 203 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000203

AMERICAN
OVERSIGHT

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN

September 5, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: Administrative Complaint by (b)(6); (b)(7)(C)

To Whom It May Concern:

On behalf of (b)(6); (b)(7)(C) enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. Custom House, 7th Floor Philadelphia, PA			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) c/o Emery Celli Brinckerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, NY 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN	4. DATE OF BIRTH (b)(6); (b)(7)(C)	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT 01/27/2019 02/03/2019	7. TIME (A.M. OR P.M.) A.M.	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Please see attached.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
CELLMATE #1		UNKNOWN			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY 1,000,000	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM (212) 763-5000		14. DATE OF SIGNATURE 07/16/2019
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

Authorized for Local Reproduction
Previous Edition is not Usable

NSN 7540-00-634-4046

DATE RECEIVED
FEDERAL BUREAU OF PRISONS
REGIONAL COUNSEL OFFICE

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

AMERICAN
OVERSIGHT

2019-02980 205 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000205
NERO-PHILADELPHIA

SEP 19 2019

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes ☐ No If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes ☐ No If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

8. **BASIS OF CLAIM** (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit I 63, cell ?.
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, regular showers, hot showers and hot water, medical or psychiatric care, exercise, or outside communications with my family or lawyers via email, pay phone, or visits.
- d. In addition to these facts, I also experienced the following circumstances between January 27, 2019 and February 3, 2019 while I was confined at MDC: [Example: unclean drinking water, broken toilet, rotting food]

In cell 24 hours a day for 8 days.
no laundry; no shower for 8 days.
wore same clothes upon entering cell.
Two days without a kosher meal.
Pitch dark when sun went down.
not allowed counsel visit.
no telephone.
Outside groups donated blankets.
see P3,4,5 attached

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort as a result of my exposure to the cold; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness caused by lack of access to showers or clean clothing; and emotional and psychological distress.

- b. I suffer from [insert medical conditions here] Extreme anxiety

_____ and during this period I was not provided with needed medical care. Specifically, I was not provided with [Example: daily medication] for first 2 days.

- c. In addition to those injuries described in paragraph 10(a) above, I also suffered the following injuries between January 27, 2019 and February 3, 2019 while I was confined at MDC, and/or as a result of the events of that week of confinement: [Examples: nightmares, anxiety, asthma symptoms, nausea, diabetes, etc.]

Anxiety - extreme; nausea, sleep-deprived, other cellmate smoked illegal material, putting me at risk.

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

11. WITNESSES

The following people witnessed the circumstances that caused my injury:
[Provide name and address for each]

Everyone in building.

I am: (Circle one)

Single

Married

II. The Horrific Conditions at MDC

We submit the inhumane conditions which Mr. (b)(6); (b)(7)(C) was forced to endure at the MDC, following his remand in this case, are a significant factor the Court should consider in imposing the Requested Sentence. *See e.g. U.S. v. Carty*, 264 F.3d. 191, 196 (2d Cir. 2001) (holding that harsh pre-sentence confinement conditions may be a permissible basis for downward departure).

On January 25, 2019, Mr. (b)(6); (b)(7)(C) was arraigned on the VOSR and was detained pursuant to a permanent order of detention issued by Magistrate Tomlinson. Thereafter, he was housed at MDC Brooklyn. A few days later, a power failure occurred at the MDC. In response to the power failure, the staff at MDC subjected Mr. (b)(6); (b)(7)(C) - and the other inmates -- to abhorrent living conditions which included a deprivation of life's basic necessities such as heat, food, sanitation, hot water and lighting. Additional details about these conditions include:

- Mr. (b)(6); (b)(7)(C) was locked into his cell for 24 hours a day, for 8 days, with nothing to read or keep him otherwise mentally stimulated;
- During the period of the blackout, outside temperatures were sometimes in the teens and single digits. Inside the jail, there was minimal heat. Despite this circumstance, the staff at MDC refused to provide Mr. (b)(6); (b)(7)(C) with blankets, jackets or extra clothing in order to keep warm. As a result, Mr. (b)(6); (b)(7)(C) was constantly shivering due to temperatures inside the jail sometimes being in the 40's;
- There was no hot water provided to the inmates. When he brushed his teeth, Mr. (b)(6); (b)(7)(C) had to use water which was so cold it hurt his mouth. For 8 days, he could not maintain basic bodily hygiene. He was not permitted to take a shower. He wore the same clothes for eight days;
- Mr. (b)(6); (b)(7)(C) who is an observant Jew, was denied edible food. Despite repeated requests, the MDC staff refused to provide him with kosher food. At times, meals (consisting of non-kosher cold food which he could not eat) were served only twice a day. For several days, an apple was the only food Mr. (b)(6); (b)(7)(C) could eat;
- Mr. (b)(6); (b)(7)(C) was denied access to his daily medications which included antidepressant/anti-anxiety medication;

- Although the MDC had generators, no lighting was provided to Mr. (b)(6); (b)(7)(C) cell. The only lighting he received was indirect natural light. From sunset to sunrise, he was locked in his cell in pitch black darkness;
- Mr. (b)(6); (b)(7)(C) was denied access to counsel as the MDC did not allow legal visiting during most of the blackout period;
- Mr. (b)(6); (b)(7)(C) was denied access to a telephone leaving his family, friends and counsel, uncertain about the state of his health and safety.

The existence of these conditions is the basis for a recently filed class action lawsuit against the MDC Warden Herman Quay. The Complaint filed in this action alleges:

A humanitarian crisis that unfolded in [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 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, MDC's Warden, Defendant Herman Quay, engaged in a shocking dereliction of his obligation to provide these most basic minimal living standards to more than a thousand people in his care and custody. *Scott & Cerda v. Quay*, 19 cv 1075 (EDNY), Complaint ¶2.

The reporting about these conditions was widely publicized, *see e.g.*, Annie Correal, *No Heat for Days at a Jail in Brooklyn Where Hundreds of Inmates are Sick and 'Frantic'*, N.Y. Times (Feb. 1, 2019), <https://nyti.ms/2UCOImd>.

Arguably, the existence of these conditions was tantamount to a Constitutional violation. *See, e.g., Darnell v. Pineiro*, 849 F.3d 17,30 (2d Cir. 2017) (indicating that

prison conditions which pose an unreasonable risk of serious damage to health can establish a deprivation of rights under the Eight and Fourteen Amendments), *citing*, *Walker v. Schult*, 717 F.3d 119, 125 (2d Cir. 2013). As such, we submit the Requested Sentence will give due consideration to the hardships Mr. (b)(6); (b)(7)(C) suffered during the MDC blackout.

P. 5

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

August 14, 2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

I, [REDACTED] authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely,

[REDACTED]

[REDACTED]

DOB:

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

FIRST-CLASS



02 1P
000120292
MAILED FROM ZIP
F-000215

2019-02980 215 of 227

DOJ-19-0278, 19-0279, and 19-0280-F-000215



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

*U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106*

September 17, 2019

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

Re: Administrative Tort Claim Received September 9, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-06812

Dear Ms. Rosenfeld:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn between January 27, 2019, and February 3, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6);
(b)(7)(C)

Darrin Howard
Regional Counsel

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

CHARLES J. OGLETREE, JR.
EMERITUS

DIANE L. HOUK
JESSICA CLARKE

ALISON FRICK
DAVID LEBOWITZ
DOUGLAS E. LIEB
ALANNA KAUFMAN
EMMA L. FREEMAN
DAVID BERMAN
ASHOK CHANDRAN
MICHELE YANKSON

July 3, 2019

Via U.S. Mail

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

Re: *Administrative Complaint by* [REDACTED]

To Whom It May Concern:

On behalf of [REDACTED] enclosed please find:

- SF-95 Claim Form
- SF-95 Supplement
- Authorization to File SF-95

If you have any questions, I can be reached by phone at (212) 763-5000 or by email at krosenfeld@ecbalaw.com. Thank you for your attention to this matter.

Sincerely,

/s/

Katherine Rosenfeld

Encl.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Northeast Regional Office U.S. Custom House, 7th Floor Philadelphia, PA			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. (b)(6); (b)(7)(C) c/o Emery Celli Brinckerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, NY 10020		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☐ CIVILIAN		4. DATE OF BIRTH (b)(6); (b)(7)(C)		5. MARITAL STATUS Single	
6. DATE AND DAY OF ACCIDENT 01/27/2019		7. TIME (A.M. OR P.M.) A.M.		8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Please see attached.	
DATE RECEIVED FEDERAL BUREAU OF PRISONS REGIONAL COUNSEL OFFICE JUL 05 2019 NERO-PHILADELPHIA					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Please see attached.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY 1,000,000		12c. WRONGFUL DEATH	
				12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). <i>Katherine Rosenfeld</i>			13b. PHONE NUMBER OF PERSON SIGNING FORM (212) 763-5000		14. DATE OF SIGNATURE 07/02/2019
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages in necessary)

- a. During the week of January 27, 2019 through February 3, 2019, I was incarcerated in the West Building at the Metropolitan Detention Center in Brooklyn, New York. During that week, there was a power failure in the West Building.
- b. I was confined in Unit 63.
- c. In the seven-day period between January 27, 2019 and February 3, 2019 while I was confined at MDC: (1) there was no electricity and no functioning lights, and I was confined in near-darkness; (2) there was little to no heat and I was confined in freezing cold temperatures without adequate clothing or blankets; (3) there was a building-wide lockdown and I was confined to my cell for long periods of time; and (4) I had little to no access to clean laundry, hot food, regularly scheduled meals, functioning toilets, regular showers, hot showers and hot water, medical or psychiatric care, exercise, commissary, or outside communications with my family or lawyers via email, pay phone, or visits.

10. PERSONAL INJURY/WRONGFUL DEATH: STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURY PERSON OR DECEDENT.

- a. As a result of being confined in the circumstances described in paragraph 8, including but not limited to a prolonged period of bitter cold, moisture, and darkness, I suffered the following injuries which form the basis of my claim: physical pain and discomfort; hunger; exposure to noxious odor, air quality, and excessive noise; severe personal uncleanliness caused by lack of access to showers or clean clothing and linens; and emotional and psychological distress.

Supplement to Claim for Damage, Injury, or Death (Standard Form 95)

- b. Between January 27, 2019 and February 3, 2019, I suffered from: fear and anxiety, insomnia, stomach pain, intermittent vomiting, and cold symptoms including coughing and sneezing.

AUTHORIZATION TO FILE SF-95 ON MY BEHALF

June 28, 2019

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

To Whom it May Concern:

(b)(6); (b)(7)(C)

I, [REDACTED], authorize my representatives at Emery Celli Brinckerhoff & Abady LLP, including Katherine Rosenfeld, to submit an administrative complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. against the Bureau of Prisons.

Thank you. If you have any questions, please call Ms. Rosenfeld at 212-763-5066.

Sincerely,

(b)(6); (b)(7)(C)

DOB:

(b)(6); (b)(7)(C)

EMERY CELLI BRINCKERHOFF & ABADY LLP
600 FIFTH AVENUE, 10TH FL. • NEW YORK, NEW YORK 10020

NEW YORK
NY 100
03 JUL '19
PM 13 L

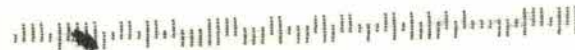
FIRST-CLASS



PITNEY BOWES
US POSTAGE
\$ 000.65⁰
02 1P
0001202922 JUL 03 2019
MAILED FROM ZIP CODE 10020

U.S. Department of Justice
Federal Bureau of Prisons
Northeast Regional Office
U.S. Custom House
2nd & Chestnut St., 7th Floor
Philadelphia, PA 19106

19106-297999





U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House
2nd & Chestnut Streets - 7th Floor
Philadelphia, PA. 19106

July 12, 2019

Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020
Attn: Katherine Rosenfeld, Esq.

Re: Administrative Tort Claim Received July 5, 2019
Filed on Behalf of (b)(6); (b)(7)(C)
Claim No. TRT-NER-2019-05175

Dear Ms. Rosenfeld:

This will acknowledge receipt of the administrative claim you submitted on behalf of (b)(6); (b)(7)(C) for an alleged personal injury suffered at MDC Brooklyn on January 27, 2019, through February 1, 2019.

Under the provisions of the applicable federal statutes, we have six months from the date of receipt to review, consider, and adjudicate your claim. In order for this office to properly evaluate this claim, you are required to submit all the information required by 28 C.F.R. §14.4(b).

All correspondence regarding this claim should be addressed to me at: Federal Bureau of Prisons, Northeast Regional Office, Room 701, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, Pennsylvania 19106. If the circumstances surrounding this claim change in any fashion, you should contact me immediately.

Sincerely,

(b)(6); (b)(7)(C)

Darrin Howard
Regional Counsel



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA 19106

November 22, 2019

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

RE: Administrative Claim No. TRT-NER-2019-04377

(b)(6); (b)(7)(C)

Dear Ms. Rosenfeld:

Administrative Claim No. TRT-NER-2019-04377, properly received in this office on May 23, 2019, has been accepted and considered for settlement as provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2672, under authority delegated to me by 28 C.F.R. § 543.30. You seek \$1,000,000.00 in compensation for an alleged personal injury sustained at the Metropolitan Detention Center in Brooklyn, New York, between January 27, 2019, and February 3, 2019. Specifically, you state a power outage adversely affected the institution's heating, hot water, meals, and lighting. You allege (b)(6); (b)(7)(C) suffered a disruption in his ulcer medication resulting in stomach pains and nausea. You also allege Mr. (b)(6); (b)(7)(C) slipped and fell as a result of damp and moldy conditions.

An investigation, including a review of the medical records, does not reflect Mr. (b)(6); (b)(7)(C) sought medical care from Health Services for ailments related to the power outage. As for the alleged slip and fall, there is no evidence to suggest Mr. (b)(6); (b)(7)(C) suffered injuries. There is no evidence Mr. (b)(6); (b)(7)(C) experienced a compensable loss as the result of negligence on the part of any Bureau of Prisons employee. Accordingly, your claim is denied.

If you are dissatisfied with this decision, you may bring an action against the United States in an appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,

Darrin Howard
Regional Counsel

cc: D. Edge, Warden, MDC Brooklyn

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Katherine Rosenfeld, Esq.
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue at Rockefeller Center
10th Floor
New York, NY 10020

402 4990 9063 5369 52

2. Article Number (Transfer from service label)

7013 0600 0001 9910 4449

TURNER 2019 04377

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

address different from item 1? ☐ Yes
enter delivery address below: ☒ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☒ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Restricted Delivery

(over \$500)

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

