



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

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



**Review and Inspection of
Metropolitan Detention Center
Brooklyn Facilities Issues and
Related Impacts on Inmates**

Evaluation and Inspections Division 19-04

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Executive Summary

Review and Inspection of Metropolitan Detention Center Brooklyn Facilities Issues and Related Impacts on Inmates

Introduction

According to the Federal Bureau of Prisons (BOP), Metropolitan Detention Center (MDC) Brooklyn is an administrative security Metropolitan Detention Center that houses approximately 1,700 federal pretrial inmates and federal inmates serving sentences (herein collectively referred to as inmates). On Sunday, January 27, 2019, MDC Brooklyn experienced an electrical fire that caused a partial power outage in its West Building. Although the fire was contained soon after it began, the partial power outage lasted a full week—until Sunday, February 3. The outage affected lighting in housing areas, computers, phones, and other institution systems and equipment. As a result, MDC Brooklyn canceled legal and social visiting that week.

Throughout the 7-day power outage, inmates, their attorneys and families, the public, and members of Congress (all of whom we refer to as stakeholders) expressed concerns that inmates were not receiving food and appropriate medical attention and that the facility was without heat. The power outage coincided with a 6-day period of extremely cold temperatures in New York City, with a low temperature of 2 degrees Fahrenheit on January 31.

Given the significance of these issues and concerns, on February 7, 2019, the Office of the Inspector General (OIG) initiated a review and inspection of MDC Brooklyn to determine whether the BOP took appropriate steps to address issues caused by the fire and power outage, how those issues affected the conditions of confinement, and whether the BOP had in place adequate contingency plans to respond to such an incident.

Results in Brief

We found that during the power outage there were significant heating issues at MDC Brooklyn. These heating issues were unrelated to the fire and subsequent power outage, which did not affect MDC Brooklyn's heating systems. Instead, long-standing temperature regulation issues caused temperatures in certain housing units in MDC Brooklyn's West Building to drop below the BOP target of 68 degrees before, during, and after the power outage.

We found that MDC Brooklyn and BOP management took steps to ensure the safety and security of the facility during the power outage but failed to effectively manage other critical aspects of the situation. Specifically, MDC Brooklyn and the BOP did not effectively address two medical issues and did not effectively communicate with stakeholders MDC Brooklyn's decision to suspend legal and social visiting

during the power outage. This was particularly problematic in view of MDC Brooklyn's population of pretrial inmates. Moreover, MDC Brooklyn and BOP management did not provide sufficient notice or information to the public about the fire and the effect of the power outage on conditions of confinement, including that the power outage did not affect heating in the facility. As a result, within days of the fire, there was extensive media reporting about conditions at MDC Brooklyn with a lack of definitive information from the BOP; multiple legal actions were filed against the BOP; numerous members of Congress expressed concerns about facility conditions and sought to visit MDC Brooklyn; and inmates became disruptive following protests outside the facility.

Accordingly, we found that existing MDC Brooklyn contingency plans do not address how and when staff should alert and update external stakeholders about significant disruptions at the facility that affect legal and social visits and conditions of confinement. Updates to contingency plans and policies, which consider the information needs of stakeholders as well as their roles in the criminal justice system, would assist the BOP in more effectively managing crisis situations.

The BOP Failed to Adequately Address Preexisting Heating and Cooling Issues at MDC Brooklyn, Resulting in Certain Inmate Housing Areas Being Below the BOP Target Temperature in January and February 2019

We found that before, during, and after the January power outage, temperatures in MDC Brooklyn's West Building occasionally fell below the BOP's winter target of 68 degrees for periods of time, with the coldest recorded temperature at 59 degrees 1 week before the fire. We also found that temperature regulation issues at the facility resulted in winter temperatures in certain parts of the West Building far exceeding 68 degrees, including temperatures in excess of 80 degrees.

MDC Brooklyn staff have long struggled to regulate temperatures in the West Building. According to facilities staff, a significant reason for this is that MDC Brooklyn has not installed a Building Management System (BMS), which would continuously monitor building temperatures and heating and cooling equipment functionality. Additionally, a BMS would allow facilities staff to make corrective adjustments more quickly. Absent a BMS, we found that facilities staff used an unreliable method to measure West Building temperatures before and during the power outage. As a result, we cannot state with reasonable assurance how many inmate housing areas experienced temperatures at or below the BOP target of 68 degrees or for how long localized temperatures remained below



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the target. Though inmates' temperature sensitivities may vary, multiple inmates housed in units experiencing temperatures below 68 told us that they were "freezing" or very cold during the power outage.

We also found that environmental factors other than ambient air temperature could have made inmates feel colder. First, exterior cell walls, which abut inmate beds, can have surface temperatures well below the ambient air temperature. Second, airflows out of cell heating and cooling vents were at high speeds, making it difficult for inmates to avoid exposure to fast moving air. Third, cold-weather clothing such as thermal underwear and sweat suits are not standard issue at MDC Brooklyn. Although available ambient air temperature readings did not indicate actual freezing temperatures (i.e., below 32 degrees), these factors likely contributed to the conditions that some inmates described as very cold or freezing.

MDC Brooklyn Management Took Steps to Ensure the Safety and Security of the Facility During the Power Outage but Did Not Effectively Address Heating and Two Medical Issues

We found that MDC Brooklyn and BOP management took several steps to ensure the safety and security of the institution. For example, the Warden followed the institution's fire contingency plan, which included notifying regional BOP management and the BOP's Central Office of the situation. MDC Brooklyn management also decided to keep inmates secured in their cells for certain periods to maintain safety. The Warden also made the judgment, which was supported by the acting BOP Director, not to evacuate the jail because doing so would have presented a greater security risk than keeping the inmates at MDC Brooklyn.

While these judgments were not unreasonable, we found certain significant flaws in the facility's management during the week of the power outage. First, as described above, the MDC Brooklyn management did not effectively handle preexisting temperature regulation problems at the facility, which became an issue once again during the power outage because of the extremely cold temperatures outside.

Second, although the decision to cancel in-person legal and social visiting during the power outage due to existing security concerns was not unreasonable under the circumstances, we believe that MDC Brooklyn management could have better prepared for this contingency by having an alternative visitation plan available to use once it became clear that the power outage would not be resolved promptly.

Third, we found that, while medical rounds continued during the week of the power outage, preparations were not made to handle inmates who used continuous positive airway pressure machines. Further, although MDC Brooklyn management told us inmates could have submitted paper requests for refills of certain medications, we found that the standard electronic request method was unavailable during the power outage.

Fourth, we found that MDC Brooklyn management could have done more to communicate to inmates and staff the circumstances surrounding the power outage and alternative methods for accessing vital services, such as communicating with counsel and requesting prescription refills, when telephones and inmate computer systems were unavailable.

The BOP Did Not Communicate the Status of Conditions at the Facility During the Power Outage or the Reason for Canceling Legal and Social Visits in a Sufficient or Timely Manner

MDC Brooklyn and the BOP did not take sufficient proactive steps to inform defense counsel, the courts, inmates' family members, the public, and members of Congress about the effect of the power outage on legal and social visiting and the conditions of confinement at MDC Brooklyn in the aftermath of the fire. In fact, the BOP did not issue a press release until 6 days after the fire, and then only in response to media reporting that highlighted criticisms of MDC Brooklyn's management of the situation.

This lack of information contributed to confusion about the nature of the situation at the facility, which in turn contributed to disruptions by inmates inside the jail, protests outside the jail, multiple judicial actions, congressional scrutiny, and rumors and speculation about the seriousness of conditions at the facility.

We believe that these problems were due, in part, to the fact that the BOP underestimated the degree of public interest in the effect of the fire and power outage on conditions at MDC Brooklyn and because MDC Brooklyn contingency plans did not provide sufficient guidance to staff about alerting and updating external stakeholders about significant events that disrupt visiting and significantly affect conditions of confinement.

Recommendations

We make nine recommendations to ensure that the BOP is better able to minimize the effect that future facilities issues and disruptive events have on inmates at MDC Brooklyn and other BOP institutions.

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INTRODUCTION

Background

On Sunday, January 27, 2019, an electrical fire at the Federal Bureau of Prisons' (BOP) Metropolitan Detention Center (MDC) Brooklyn caused a partial power outage in its West Building, which houses male federal pretrial inmates and federal inmates serving sentences.¹ Although the fire was contained soon after it began, the partial power outage lasted a full week—until Sunday, February 3 (see the [Timeline of Major Events at MDC Brooklyn](#)). The outage affected the West Building's lighting and electrical outlets in inmate cells and common areas, inmate and staff computer systems, inmate phones, and other systems and equipment.² Due to the outage, MDC Brooklyn canceled legal and social visiting for the entire MDC facility, limiting inmates' access to legal counsel during the week.³ Concerns were also raised that parts of MDC Brooklyn were without heat and inmates were not receiving food and appropriate medical attention during the outage.⁴ Given the significance of these issues, and in response to both congressional and U.S. Department of Justice (Department, DOJ) requests, on February 7, 2019, the DOJ Office of the Inspector General (OIG) initiated a review and inspection of MDC Brooklyn to determine whether the BOP took appropriate steps to address issues caused by the fire and power outage, how those issues affected the conditions of confinement for inmates, and whether the BOP had in place adequate contingency plans for such an incident.⁵

¹ According to 28 C.F.R. § 551.101, the term "pretrial inmate" describes "a person who is legally detained but for whom the Bureau of Prisons has not received notification of conviction. Thus, a 'pretrial inmate' ordinarily includes a person awaiting trial, being tried, or waiting a verdict." MDC Brooklyn houses approximately 1,700 federal pretrial inmates and federal inmates serving sentences (herein collectively referred to as inmates).

² The fire did not affect the power supply to MDC Brooklyn's East Building, which houses female inmates.

³ Inmate housing unit telephones that connect directly to the Federal Defenders of New York were operational during the power outage. Therefore, inmates represented by the Federal Defenders of New York could speak with counsel by telephone.

⁴ For example, public defenders, *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons and Warden Herman Quay* (E.D.N.Y., filed Feb. 4, 2019); media reporting, "No Heat for Days at a Jail in Brooklyn Where Hundreds of Inmates Are Sick and 'Frantic,'" *The New York Times*, February 1, 2019, and "Power Restored to Brooklyn Jail Where Inmates Went a Week Without Heat," *NPR*, February 4, 2019. See also Jerry Nadler, Press Release, "[Lawmakers Press for Answers, Following MDC BK Heat, Power Outage](#)," February 6, 2019, www.nadler.house.gov/news/documentsingle.aspx?DocumentID=392787 (accessed September 17, 2019).

⁵ U.S. Congress, [letter to Michael E. Horowitz](#), Inspector General, U.S. Department of Justice, February 6, 2019, www.velazquez.house.gov/sites/velazquez.house.gov/files/02-06-19%20DOJ%20OIG%20letter%20re%20MDC%20Brooklyn.pdf, and BOP, Press Release, "[Statement on MDC Brooklyn Facility Issues](#)," February 6, 2019, www.int.nyt.com/data/documenthelper/600-the-department-of-justice-stat/651039689cdea2771cc6/optimized/full.pdf (both accessed September 17, 2019).

MDC Brooklyn

MDC Brooklyn is the largest federal Metropolitan Detention Center in the country and houses approximately 1,700 male inmates in its West Building and approximately 40 female inmates in its East Building. When the Special Housing Unit (SHU) in the West Building is at capacity, MDC will house additional male SHU inmates in the East Building.⁶ The institution's mission is to house federal inmates from the New York City metropolitan area who are processing through the federal judicial system. As an administrative security facility, MDC Brooklyn houses inmates at all security levels, sometimes including high-profile inmates with a variety of criminal histories, including terrorism, organized crime, and drug smuggling.⁷ Generally, MDC Brooklyn houses inmates on a short-term basis, averaging 120 to 180 days. After inmates are convicted and sentenced, the BOP assigns them to one of its long-term correctional facilities. MDC Brooklyn's West Building houses male inmates in 18 housing units on 6 floors. The two units on the top floor are SHUs, which house inmates who are either on administrative detention or in disciplinary segregation.⁸ The East Building houses female inmates in one housing unit on one floor, and, as stated above, also houses male inmates in one additional SHU on another floor. The two buildings are connected by an underground tunnel, which MDC Brooklyn staff call "the link."

Male Inmate Management

On a typical day, MDC Brooklyn Correctional Officers release non-SHU inmates from their cells at 6 a.m. and inmates can occupy the housing unit common area until they are secured for the evening following a 9:30 p.m. inmate accountability check. Each unit, which can house more than 100 inmates, is supervised by 1 Correctional Officer. Throughout the day, inmates can eat and socialize in the common area; attend Education, Religious, or Psychology Department programming; and utilize unit recreation facilities, such as a caged recreation deck with outdoor exposure. During the normal course of operations, inmates can also use:

- private showers located in the common area;

⁶ The West Building opened in November 1999. The West Building has a rated capacity of 1,753 male inmates. The East Building opened in January 1994. The rated capacity of the East Building, as currently configured, is 125 female inmates.

⁷ Administrative facilities are institutions with special missions, and inmates are assigned to them based on factors other than security and/or staff supervision (for example, medical/mental health issues or pretrial or holdover status). See BOP Program Statement 5100.08, Inmate Security Designation and Custody Classification, September 12, 2006.

⁸ Administrative detention status removes the inmate from the general population when necessary to ensure the safety, security, and orderly operation of correctional facilities or to protect the public. Administrative detention status applies only to SHU inmates, is non-punitive, and can occur for a variety of reasons, according to the BOP. Disciplinary segregation status is a punitive status imposed only by a Discipline Hearing Officer as a sanction for committing prohibited acts. See BOP Program Statement 5270.11, Special Housing Units, November 11, 2016.

- laundry machines to wash personal clothing;
- phones to speak with family, friends, and legal counsel;⁹
- unmonitored phones that connect to the Federal Defenders of New York;¹⁰ and
- monitored computers to perform legal research, request nonemergency medical attention, refill prescriptions, and communicate with friends and family.¹¹

Inmates who work in Food Services prepare meals in a central kitchen inside the West Building, and Correctional Officers then deliver large meal carts to each unit.¹² Breakfast is usually a cold meal, whereas lunch and dinner are hot meals. During typical weekday operations, Correctional Officers deliver breakfast to the housing units around 7 a.m., lunch around 11 a.m., and dinner around 5 p.m. Before dinner, from 4 to 4:30 p.m., Correctional Officers perform a census count, during which all inmates are confined to their cells.

MDC Brooklyn's Health Services staff deliver required medication or insulin to inmates every morning and evening. Inmates line up in their housing unit common area, and a staff member administers the prescribed dosages. If inmates are confined to their cells, Health Services staff administer prescribed dosages to inmates at their cells. Staff and inmates refer to these deliveries as "pill line" and "insulin line." Pill line and insulin line may occur simultaneously or at different times, meaning that Health Services staff make two to four visits to each housing unit every day. Health Services staff provide inmates with multiday supplies of certain drugs that have a low risk of abuse, and inmates are encouraged to request a refill through the inmate computer system within 5 days of exhausting their supply. If inmates cannot make a timely electronic request, they can make a written request or ask Health Services staff for a refill during pill or insulin line.

Inmates in the SHU are confined to their cells for 23 hours per day and are allowed 1 hour of outdoor recreation time. Like inmates in regular housing units, SHU inmates receive three meals a day and, if necessary, medication or insulin twice a day. Unlike cells in regular housing units, SHU cells have a shower. SHU

⁹ The BOP monitors all calls made on inmate phones. If inmates need to make an unmonitored legal call to a private attorney, they can use staff phones.

¹⁰ The Federal Defenders of New York represents clients in the Eastern and Southern Districts of New York who have been charged with federal crimes and cannot afford to hire an attorney. See Federal Defenders of New York, "[About Us](http://www.federaldefendersny.org/about-us)," www.federaldefendersny.org/about-us (accessed September 17, 2019). Only inmates represented by the Federal Defenders of New York are allowed to use these unmonitored phones.

¹¹ BOP inmate computer systems allow inmates to perform legal research, request nonemergency medical attention, refill prescriptions, communicate with friends and family, and file Prison Rape Elimination Act of 2003 complaints.

¹² Though the BOP generally requires sentenced inmates to work, pretrial inmates are not required to do so. However, some pretrial inmates choose to perform paid work in a number of capacities at MDC Brooklyn.

inmates may have unlimited contact with legal counsel, but they can make only one call to friends or family every 30 days.¹³

Legal and Social Visiting for Male Inmates

MDC Brooklyn's regular attorney visiting hours are 8 a.m.–7:30 p.m. Monday through Friday and 8 a.m.–3 p.m. on weekends and holidays. There are no limits to the number of visits inmates can have with their attorney. MDC Brooklyn's regular social visiting hours are 12–3 p.m. and 5–7:30 p.m. each day. MDC Brooklyn assigns housing units a different day of the week for social visiting and allots each inmate one 1-hour social visit per week with up to four visitors. While BOP regulations state that “the Warden shall provide the opportunity for pretrial inmate-attorney visits on a seven-days-a-week basis,” regulations also state that Wardens may restrict inmate visiting “when necessary to ensure the security and good order of the institution.”¹⁴

West Building Electrical System

MDC Brooklyn's West Building receives a high-voltage electrical current from its electrical utility provider. The electrical current is delivered to three switchgears, each of which protects an electrical distribution panel by shutting off the electrical current in the event of a power surge. Once the electrical current is clear of the switchgear, it is delivered to electrical distribution panels, which distribute the current to different systems and equipment in the West Building. MDC Brooklyn labels its switchgears and electrical distribution panels as Priority 1, Priority 2, or Priority 3.

Among other systems and equipment, the three electrical panels distribute electricity to:

- Priority 1:** Emergency lighting throughout the West Building; heating, ventilation, and cooling (HVAC) equipment; fire alarms; security cameras; and electrical outlets used for medical and other life-safety equipment
- Priority 2:** Emergency lighting throughout the West Building, electrically controlled doors and gates, other HVAC equipment, kitchen equipment, and unmonitored phones connecting to the Federal Defenders of New York
- Priority 3:** Overhead lighting and electrical outlets in inmate cells and common areas, inmate phones, inmate computer systems, overhead lighting and electrical outlets in staff offices and common areas, and other kitchen equipment

As discussed below, the fire at MDC Brooklyn in January 2019 destroyed the switchgear protecting the Priority 3 electrical panel, making it inoperable; the fire

¹³ See BOP Program Statement 5270.11.

¹⁴ See 28 C.F.R. §§ 551.117 and 540.40 and BOP Program Statement 5267.09, Visiting Regulations, December 10, 2015.

did not damage or otherwise affect the Priority 1 or Priority 2 electrical panels, which control heat in the facility.

The January 27 Fire, 7-day Power Outage, and Electrical Repair

Photograph 1: Remains of Priority 3 Switchgear



Source: OIG photograph, February 7, 2019

On Sunday, January 27, at approximately 12:55 p.m., MDC Brooklyn had an electrical fire in the West Building's mechanical room.¹⁵ According to BOP records, immediately upon discovery of the fire, MDC Brooklyn staff contacted the New York City Fire Department, which responded to the facility in less than 15 minutes and extinguished the fire. Several MDC Brooklyn staff members donned self-contained breathing apparatuses and gave fire department personnel access to the mechanical room. Although there were no serious injuries, some of the MDC Brooklyn staff members who responded to the fire were treated for smoke inhalation. By the evening of January 27, the MDC Brooklyn Facilities Manager and his staff determined that the fire had destroyed the switchgear protecting the Priority 3 electrical panel. Photograph 1 shows its fire-damaged remains.

As a result of the damage to the switchgear, the Priority 3 electrical panel and its subordinate electrical systems and equipment could no longer receive electrical current. According to the Facilities Manager, the fire did not interrupt delivery of the electrical current to the building as a whole, nor did it damage the Priority 1 and 2 switchgears and electrical distribution panels.¹⁶ Electrical systems and equipment powered by the Priority 1 and 2 electrical panels, such as HVAC equipment and outlets for most medical equipment, continued to operate normally. However, the medical x-ray machine in the West Building, which is powered by a circuit breaker supported by the Priority 3 electrical panel, was nonoperational. MDC Brooklyn maintains a second medical x-ray machine in the East Building, which was available for use by

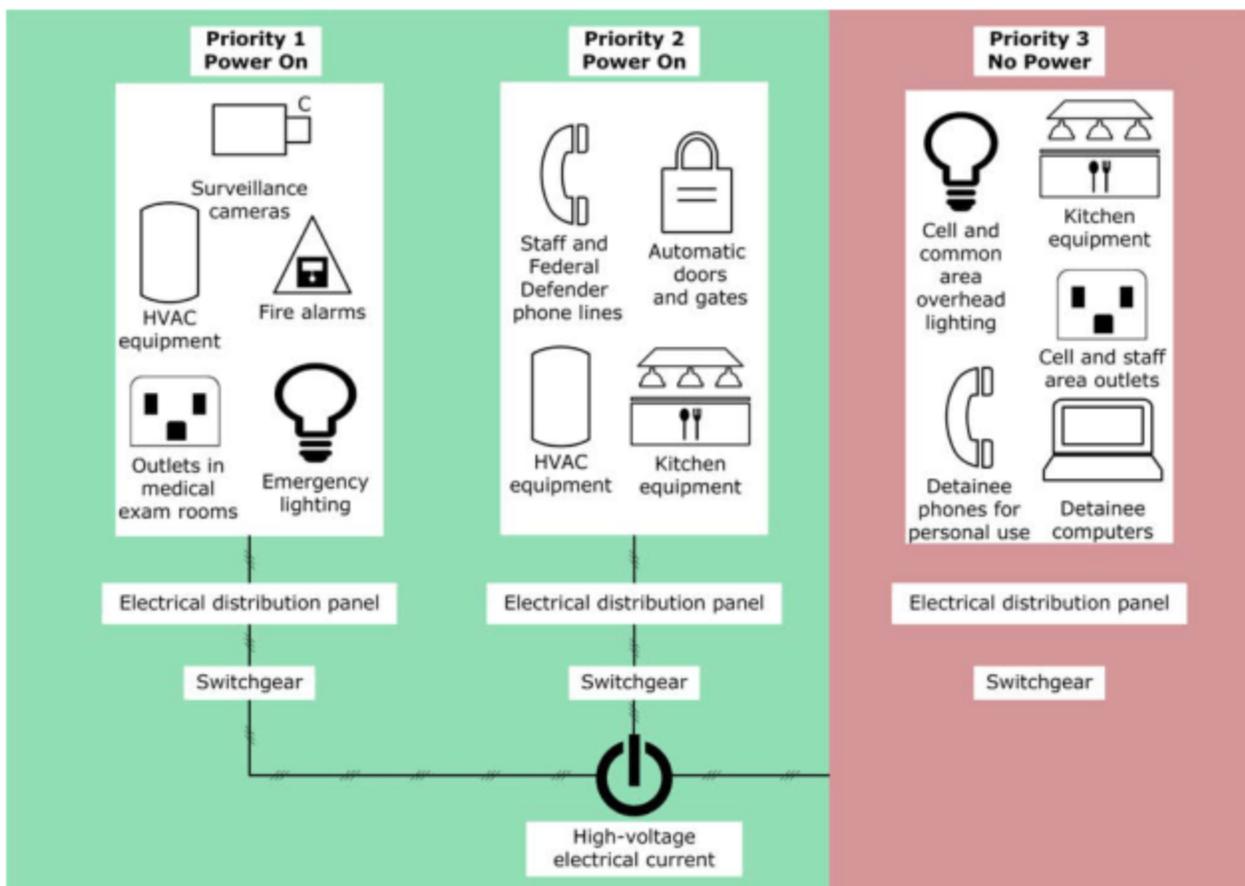
¹⁵ As of the issuance of this report, the BOP has not determined the cause of the fire.

¹⁶ If a switchgear is damaged, an electrical current cannot be safely delivered to the corresponding electrical distribution panel. Therefore, even MDC Brooklyn's three backup generators could not provide an electrical current to the Priority 3 electrical distribution panel.

MDC Brooklyn staff if an inmate in the West Building required x-ray imaging. Additionally, the MDC Brooklyn Facilities Manager told us that, as designed, the HVAC system automatically turned off when the fire alarm was activated to prevent smoke from circulating throughout the building. We were further told that, as soon as it was deemed safe to do so, approximately 2–3 hours after the fire was extinguished, MDC Brooklyn facilities staff reactivated the HVAC system.

Additionally, we were advised that emergency lighting in the West Building, which receives its electrical current from the Priority 1 electrical distribution panel, was activated when the Priority 3 panel (which controls cell and common area lighting) went down. In Figure 1, we provide a simplified diagram of the West Building electrical system and how the fire affected it.

Figure 1
Simplified Diagram of MDC Brooklyn West Building Electrical System and the Effects of Fire Damage



Source: OIG, based on electrical repair documents and MDC Brooklyn facilities staff interviews

After initially assessing the damage, MDC Brooklyn’s Facilities Manager contacted a local electrical repair firm. The repair firm arrived at MDC Brooklyn the next morning, Monday, January 28. Together with MDC Brooklyn facilities staff, the repair firm further diagnosed the damage and developed a plan to restore electricity to the Priority 3 electrical systems and equipment. Specifically, the repair firm

Photograph 2: Temporary Priority 3 Switchgear



Source: OIG photograph, February 7, 2019

determined that it needed to remove and replace the fire-damaged Priority 3 switchgear, wires connecting the utility-provided electrical current to the Priority 3 switchgear, and copper busses that distribute the electrical current from the Priority 3 switchgear to the Priority 3 electrical distribution panel. Before executing this plan, MDC Brooklyn hired a separate electrical engineering firm to determine the practicality and safety of the proposed repair plan. The engineering firm evaluated and approved the repair plan on Tuesday, January 29.¹⁷

We were told that, throughout the rest of the week, the repair firm and MDC Brooklyn staff made repairs to restore electricity. According to MDC Brooklyn's Facilities Manager and the owner of the electrical repair firm, one of the more challenging tasks was sourcing and installing a replacement switchgear compatible with the facility's electrical system. As Photograph 2 shows, switchgears are large pieces of equipment. The Facilities Manager and the repair firm owner stated that this temporary switchgear needed to be disassembled to fit inside the facility, reassembled in the mechanical room, and then modified to integrate with MDC Brooklyn's electrical system.

The MDC Brooklyn Facilities Manager and the repair firm owner told us that the electrical repair firm had almost completed its work by Saturday, February 2, but that it still needed to source one additional part before it could complete the repair and safely restore electricity. The repair firm owner and MDC Brooklyn staff did not anticipate that the firm would be able to source the part until suppliers

¹⁷ In a court declaration, the Facilities Manager explained that he was able to locate some spare circuits that received power from Priority 1 and Priority 2. He reprogrammed those circuits to provide additional lighting to certain areas, including medical treatment areas, food services areas, and the Receiving and Discharge areas (where inmates are searched before entering or leaving the building). The Facilities Manager explained that he could not use this method to restore power to all areas and all systems, including inmate cells, because there was not enough electrical amperage in the spare circuits to supply such a large power demand. Declaration at 4 and 5, *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons and Warden Herman Quay*.

reopened for business on Monday, February 4. However, the repair firm owner told us that he sourced the necessary part over the weekend and restored power to the remaining Priority 3 systems, including overhead lighting for inmate cells and common areas, by 6 p.m. on Sunday, February 3.¹⁸

Previous to the events that prompted this review and inspection, in early January 2019 MDC Brooklyn experienced another significant electrical issue resulting in a power disruption. We describe the issue in the text box.

Previous MDC Brooklyn Electrical Issue

According to the MDC Brooklyn Facilities Manager, on Friday, January 4, 2019, at approximately 6 a.m., a Priority 3 circuit breaker tripped, disrupting the electrical supply to the Priority 3 systems and equipment. Facilities staff members could not reset the circuit breaker; but, because there was no damage to the switchgear, they were able to use MDC Brooklyn's diesel generators to power the Priority 3 systems and equipment within 5 minutes of the power outage. However, at approximately 1 a.m. on Saturday, January 5, a generator malfunction cut off power to Priority 3 systems and equipment. By 5 p.m., MDC Brooklyn facilities staff were able to reset the tripped circuit and reestablish the electrical supply. The electrical repair firm, MDC Brooklyn's Facilities Manager, the Warden, and BOP Regional and Central Office facilities management staff all told us that they found no evidence to suggest that the circuit breaker and generator failures were related to the January 27 electrical fire.

Sources: OIG interviews with the electrical repair firm owner, MDC Brooklyn's former Warden, MDC Brooklyn's Facilities Manager, and BOP Regional and Central Office facilities management staff and court testimony from the MDC Brooklyn Facilities Manager

Prior OIG Work Related to MDC Brooklyn

The OIG has conducted multiple investigations and reviews related to MDC Brooklyn. Below, we highlight some of the findings from our body of work:

- In a recent criminal investigation, the OIG determined that, between 2013 and 2016, two Lieutenants and one Correctional Officer engaged in criminal sexual assaults against female inmates at MDC Brooklyn. As a result of the OIG's investigation, all three former MDC Brooklyn employees were indicted and eventually convicted, the most recent in 2019.¹⁹
- In our 2018 report on the BOP's management of its female inmate population, we reviewed the impact of the transfer of 366 female inmates from the BOP's Federal Correctional Institution Danbury facility to MDC Brooklyn. Even though MDC Brooklyn is intended for short-term confinement of pre-sentenced inmates, we found that some of the 366 low security sentenced female inmates remained at MDC Brooklyn for nearly 3 years. We found that MDC Brooklyn offered female inmates no access to outdoor space

¹⁸ The total cost of services provided by the repair firm was \$58,948.

¹⁹ U.S. Attorney's Office for the Eastern District of New York, Press Release, "[Three Federal Correctional Officers Charged with Sexually Abusing Female Inmates](https://www.oig.justice.gov/press/2017/2017-05-25.pdf)," May 25, 2017, www.oig.justice.gov/press/2017/2017-05-25.pdf (accessed September 17, 2019).

and less natural light and fewer programming opportunities than would otherwise be available to female inmates at BOP facilities designed to house sentenced inmates in long-term confinement.²⁰

- In our 2015 report on MDC Brooklyn's management of its Special Programs Unit, we identified concerns with the BOP's placement of a particularly dangerous inmate in its Special Programs Unit with vulnerable inmates without implementing safeguards or providing guidance to correctional staff. We further found that MDC Brooklyn staff were not always aware of new security information or policies relevant to their work and that communication related to safety and security issues needed to be improved at the facility.²¹

Scope and Methodology of the OIG Review and Inspection

The OIG initiated this review and inspection to determine whether the BOP took appropriate steps to address issues caused by the fire and power outage, how those issues affected the conditions of confinement for inmates, and whether the BOP had in place adequate contingency plans for such an incident.²²

We visited MDC Brooklyn on three different occasions, during which we toured the facility; tested air and water temperatures in housing units; reviewed surveillance video; and interviewed management staff, medical staff, correctional staff, and 11 inmates. We also interviewed relevant BOP Central Office personnel in Washington, D.C., including the then acting BOP Director and the BOP's public relations staff, as well as the BOP's Northeast Regional Director. Further, we interviewed an Attorney-in-Charge from the Federal Defenders of New York and a representative of the U.S. Attorney's Office for the Eastern District of New York, both of whom toured the facility during the week of January 27. Finally, Congresswoman Nydia Velázquez, whose Congressional District includes MDC Brooklyn, provided us with a statement detailing her experience touring the facility during the power outage. A more detailed description of the methodology of our review and inspection is in [Appendix 1](#).

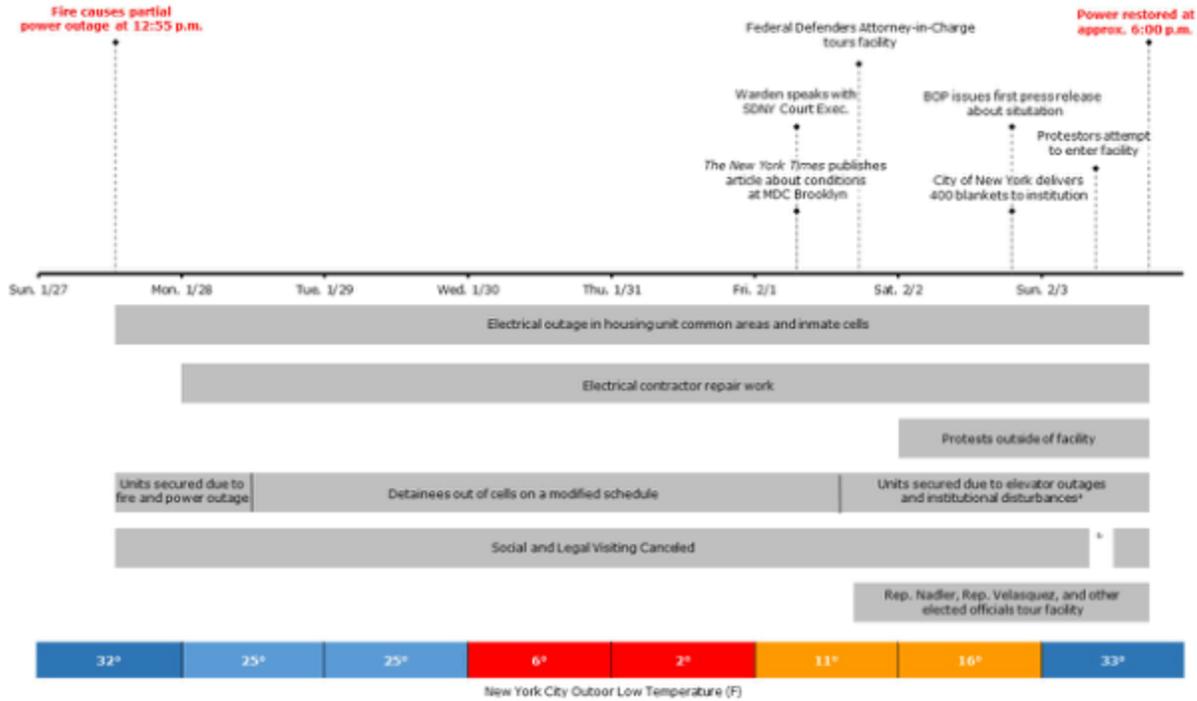
²⁰ DOJ OIG, [Review of the Federal Bureau of Prisons' Management of Its Female Inmate Population](#), Evaluation and Inspections Report 18-05 (September 2018), www.oig.justice.gov/reports/2018/e1805.pdf (accessed September 17, 2019).

²¹ DOJ OIG, [Management of the Special Programs Unit at the Federal Bureau of Prisons Metropolitan Detention Center in Brooklyn, New York](#), Evaluation and Inspections Report 15-08 (September 2015), www.oig.justice.gov/reports/2015/e1508.pdf (accessed September 17, 2019).

²² We did not assess the overall efficacy of medical care at MDC Brooklyn; however, we reviewed surveillance video footage to determine whether MDC Brooklyn staff delivered medication and insulin to housing units during the power outage.

TIMELINE OF MAJOR EVENTS AT MDC BROOKLYN, JANUARY 27–FEBRUARY 3, 2019

To help readers track the major events discussed in this report, we provide the timeline below.



^a When three of the four passenger elevators at MDC Brooklyn are nonoperational, MDC Brooklyn secures inmates. Three of four elevators were nonoperational during the morning and afternoon of Friday, February 1.

^b MDC Brooklyn held visiting on the morning of February 3 but canceled it that afternoon because protestors had attempted to enter the facility.

Sources: OIG Interviews with MDC Brooklyn staff, media reports, and MDC Brooklyn memoranda and emails

RESULTS OF THE REVIEW

The BOP Failed to Adequately Address Preexisting Heating and Cooling Issues at MDC Brooklyn, Resulting in Certain Inmate Housing Areas Being Below the BOP Target Temperature in January and February 2019

BOP policy sets a temperature target of 68 degrees Fahrenheit for its institutions during the winter. The policy also states that “occupants may experience a range of temperatures in their space that is a few degrees on either side of the targeted set point.”²³ Our review found that before, during, and after the January 27 fire, temperatures in MDC Brooklyn’s West Building occasionally fell below the BOP’s winter target temperature for periods of time, with the coldest recording being a 59 degree reading 1 week before the fire. We also found that temperature regulation issues at the facility resulted in winter temperatures in certain parts of the West Building far exceeding 68 degrees, including temperatures in excess of 80 degrees. MDC Brooklyn staff attributed these ongoing temperature regulation issues to the institution’s HVAC system.

Throughout the period of the power outage that occurred between Sunday, January 27, and Sunday, February 3, inmates, their attorneys, the public, and members of Congress expressed concern about heating conditions at MDC Brooklyn, particularly given the extremely cold temperatures in the New York City area that week.²⁴ We found that during the power outage there were significant heating issues at MDC Brooklyn. However, we determined that these heating issues were unrelated to the fire and subsequent power outage, which, as noted above, did not affect MDC Brooklyn’s heating systems. Rather, we concluded that long-standing unaddressed temperature regulation issues at MDC Brooklyn, combined with the extremely cold outdoor temperatures, caused temperatures in certain inmate housing units in MDC Brooklyn’s West Building to drop below the BOP target of 68 degrees during the week of the power outage.

We cannot, however, state with confidence how many inmate housing areas experienced temperatures at or below the BOP target temperature during the week

²³ The BOP’s Facilities Operations Manual, Program Statement 4200.12, provides: “Temperature set points will be targeted to 76 degrees Fahrenheit in the cooling season and 68 degrees Fahrenheit in the heating season. All spaces will be maintained as close to the targeted set point as possible. However, due to issues such as the age of the cooling and heating systems and the inability to control temperatures in individual spaces, occupants may experience a range of temperatures in their space that is a few degrees on either side of the targeted set point.”

The federal Occupational Safety and Health Administration views temperature and humidity conditions generally as “a matter of human comfort rather than hazards that could cause death or serious physical harm.” However, similar to BOP standards, it recommends that indoor work place temperatures be in the range of 68–76 degrees. Richard E. Fairfax, Director, Directorate of Enforcement Programs, Occupational Safety and Health Administration, memorandum to Regional Administrators State Plan Designees, OSHA Policy on Indoor Air Quality: Office Temperature/Humidity and Environmental Smoke, February 24, 2003.

²⁴ During the week of the power outage, outdoor daily low temperatures in New York City ranged between 2 and 33 degrees Fahrenheit.

of the power outage, or for how long, due to the absence of reliable temperature measuring methods at MDC Brooklyn. Thermostats in MDC Brooklyn's West Building do not show localized temperatures and do not centrally report temperature data to a computer system that can be remotely monitored. This is why MDC Brooklyn facilities staff must manually measure temperatures throughout the building, a process that can take between 2 and 4 hours, if they want to assess the facility's heating condition. In reviewing MDC Brooklyn's records, we found that facilities staff did not record temperature measurements during the first 3 days of the power outage and, for the 5 days (January 30–February 3) that staff did record temperature measurements, they did not always record measurements for every housing unit or record the time they took the measurements. Additionally, we found that measurements that MDC Brooklyn facilities staff did record before and during the power outage may be inaccurate because they did not use equipment appropriate to measure air temperature.²⁵

With these methodological deficiencies in mind, we found that available temperature logs for January 30–February 3 indicated that 8 of the West Building's 18 housing areas had at least 1 recorded temperature measurement below 68 degrees, with a lowest recorded temperature of 64 degrees. Many inmates housed in units experiencing these temperature regulation issues told the OIG that they were "freezing" or very cold during the week.

Further, we found that environmental factors other than the ambient air temperature could have made inmates feel colder. For example, the institution's exterior cell walls, which abut inmate beds, can have surface temperatures well below the ambient air temperature. Differences in wall surface and ambient air temperatures were likely greatest when outdoor temperatures were in the single digits. We also found that the airflows out of the cell heating and cooling vents were at high speeds and, given the small size of cells, it would have been difficult for inmates to avoid exposure to fast-moving air that was below the target temperature. While these conditions were likely uncomfortable for all inmates in areas experiencing heating issues, they would have been particularly uncomfortable for inmates who did not have, or were unable to purchase from the commissary, cold-weather clothing prior to the onset of extreme cold weather.

We determined that MDC Brooklyn's temperature issues were not isolated to the week of the power outage. In fact, MDC Brooklyn facilities staff have long struggled, and continue to struggle, to regulate temperatures in the West Building. Our review of historical data maintained by the facility indicates that certain inmate housing areas experienced temperatures below 68 degrees before and after the

²⁵ Instead of using a tool designed to measure ambient air temperature, MDC Brooklyn facilities staff used an infrared laser thermometer that measures surface temperature. If, for example, facilities staff pointed the laser thermometer at a vent blowing hot air, the recording would reflect the surface temperature of the vent, which would likely be higher than the ambient air temperature. Conversely, if staff pointed the laser thermometer at an exterior wall or window, the recording may have been lower than the ambient air temperature. We found that, after the power outage, MDC Brooklyn acquired and began using a hygro-thermometer to test ambient air temperature. A hygro-thermometer is an appropriate tool to test ambient air temperature and humidity.

power outage. In fact, we found that a week before the power outage a mechanical issue caused temperatures in a housing unit to fall to 59 degrees. MDC Brooklyn temperature logs also indicated that building temperatures fluctuated greatly and that inmates were more likely to experience uncomfortably warm temperatures during the winter than cold temperatures due to the unevenness of the facility's heating system. BOP staff told us that they have struggled to regulate temperatures because MDC Brooklyn has not installed a Building Management System (BMS), which would continuously monitor building temperatures and HVAC equipment functionality. With live-temperature data, MDC Brooklyn management would be able to identify areas experiencing temperatures above or below the BOP target and could make adjustments to HVAC equipment much more quickly than their current manual method for temperature measurement allows.

Temperature Logs for the Week of the Power Outage

To assess temperatures in West Building inmate housing areas during the power outage, we reviewed all available MDC Brooklyn daily temperature logs, which covered Wednesday, January 30, through Sunday, February 3. The logs indicate that inmate housing areas averaged 70 degrees at the time of measurement. However, as we discussed earlier, the logs also indicate that 8 of the West Building's 18 housing areas had at least 1 recorded temperature measurement below 68 degrees.

Because temperature logs provide only snapshot data about the temperature at the time of measurement, neither the BOP nor the OIG can use them to determine precisely how long temperatures were below the BOP target. Available data does, however, allow us to calculate the duration between an initial recorded measurement below 68 and the next recorded measurement equal to or greater than 68 (see Table 1 below).

Table 1**Housing Area Temperature Recordings Below 68 Degrees and Time Between Recordings, January 30–February 3, 2019**

Floor-Unit	Cell or Common Area	BOP-recorded Temperature	Time Between First Recording Below 68 and Next Recording Above 68
4-2	Cell	65	At least 60 hours
	Common Area	66.5	At least 60 hours
5-2	Cell	66	30 hours
	Common Area	66	52.5 hours
5-3	Common Area	67	22.5 hours
6-1	Common Area	66	22.5 hours
6-2	Cell	64	At least 60 hours
	Common Area	65.5	At least 60 hours
7-2	Common Area	65	30 hours
8-1	Common Area	66	22.5 hours
8-2	Common Area	65	22.5 hours

Note: BOP-recorded temperatures are rounded to the nearest half degree.

Source: MDC Brooklyn temperature logs

As Table 1 shows, MDC Brooklyn staff recorded temperatures below 68 degrees most frequently in the “2-Unit” cells and common areas. This result is consistent with MDC Brooklyn staff testimony to the OIG that during cold-weather periods the 2-Units are generally more difficult to heat than the 1 and 3 Units because the 2-Units are the most exposed to winds from the Upper New York Bay. Temperature recordings also indicate that the 2-Unit on the sixth floor (Unit 6-2) had the greatest number of cold temperature readings during the week and the week’s lowest recorded temperature of 64 degrees. Therefore, inmates in Unit 6-2 likely experienced cold temperatures for the longest period.

HVAC issues that occurred prior to the power outage likely caused Unit 6-2 to continue experiencing cold temperatures during the power outage. According to the MDC Brooklyn Facilities Manager, on Monday, January 21, multiple air handler heating coils in the West Building, including one responsible for heating inmate cells in Unit 6-2, burst due to cold weather. The Facilities Manager also stated that the coil responsible for heating inmate cells in Unit 6-2 was repaired before the power outage, but he could not remember exactly when. Temperature logs indicate that the repair was likely not finalized before Wednesday, January 23, when MDC

Brooklyn facilities staff measured temperatures in a Unit 6-2 cell at 59 degrees.²⁶ Subsequent discussions with an MDC Brooklyn HVAC foreman, as well as the then Warden, the Northeast Regional Director, and the then acting BOP Director, indicate that during either the initial repair, or subsequent adjustments, MDC Brooklyn facilities staff either did not properly reset certain controls or accidentally turned off the air handler entirely, causing unit temperatures to remain low at times during the outage.²⁷

Similar to our review of MDC Brooklyn's temperature logs, our review of surveillance video footage also indicates that localized temperatures differed throughout the housing units and that deviations of a few degrees can significantly affect how inmates experience environmental conditions. For example, in Unit 6-2 on January 31, where the MDC Brooklyn recorded temperature was 66 degrees in the unit's common area, surveillance video footage shows inmates wearing multiple layers, including thermal underwear and sweatpants.²⁸ One inmate was also wearing a towel as a makeshift head covering.²⁹ In contemporaneous footage from Unit 6-3, where the MDC Brooklyn recorded temperature was 70 degrees in the unit's common area that day, video footage shows that most inmates wore t-shirts and shorts.

Other Variables Affecting How Inmates Experienced the Cold Weather

During the OIG's inspection of MDC Brooklyn, we identified three other factors that may have affected how inmates were impacted by the extremely cold weather in January 2019. First, inmate beds in the West Building can abut exterior walls and the surface temperature of those exterior walls can be significantly lower than the ambient air temperature in the cell. Second, airflows out of the cell vents are at high speeds, and it is difficult for inmates to move out of the path of fast-moving air in their small cells. Third, while some inmates had purchased thermal underwear and sweat suits from MDC Brooklyn's commissary, those that could not afford to do so, or had not done so, were limited to MDC Brooklyn's standard-issue short sleeve jumpsuit and t-shirts.

Exterior Wall Surface Temperatures

We found that external wall surface temperatures can be significantly lower than the ambient air temperature in the cells. Differences were likely most

²⁶ The January 23, 2019 temperature log was the only pre-power outage temperature log that MDC Brooklyn provided the OIG. According to the MDC Brooklyn Facilities Manager, facilities staff did not routinely write down temperature measurements until Wednesday, January 30.

²⁷ As of June 9, 2019, former Warden of MDC Brooklyn Herman Quay has been serving as Warden of Federal Correctional Complex Allenwood. As of August 19, 2019, Attorney General William Barr reassigned former acting BOP Director Hugh Hurwitz to his permanent position as Assistant Director for the BOP's Reentry Services Division.

²⁸ This surveillance video footage was recorded around 11 a.m. on January 31. The temperature log from that day does not indicate when measurements were taken.

²⁹ According to one inmate we interviewed, in order to keep warm inmates were "walking around in blankets" and had "towels wrapped around their head as makeshift hoodies."

significant when outside temperatures were in the single digits and for those inmates housed in cells facing the Upper New York Bay (the 2-Units, as discussed above). Due to the layout of cells, part or all of inmates' beds may directly abut the exterior wall, causing part of inmates' bodies to be in either direct or near-direct contact with the exterior walls. Photograph 3 shows bed proximity to the exterior wall and demonstrates how exterior wall surface temperature and cell ambient air temperature can diverge. The OIG's infrared laser surface thermometer, on the left, measured the exterior cell wall surface temperature to be 64.4 degrees, while MDC Brooklyn's tool, on the right, measured the cell's ambient air temperature to be 77.8 degrees (bottom number on the display).

Photograph 3: Exterior Wall Surface and Ambient Air Temperature Differences in an Inmate Cell



Note: In this picture, the BOP is using its newly acquired hygro-thermometer, which is an appropriate tool to measure air temperature.

Source: OIG photograph, February 8, 2019 (images modified to remove brand names)

Air Speed and Blocked Air Vents

Inmates told the OIG that HVAC system-treated air flows out of cell vents at high speeds and, due to the small size of their cells, they cannot avoid the airflow. The inmates explained that high air speeds can make cells feel colder than the

ambient air temperature if the treated air entering the cell is cooler than the BOP target. Similarly, temperatures in the cell can feel hotter than the ambient air temperature if the treated air is warmer than the BOP target. MDC Brooklyn's Facilities Manager told the OIG that the airflows out of inmate cell vents are at high speeds in part because inmates block their vents in an effort to regulate cell temperature. The Facilities Manager explained that when inmates block the vents because they believe that the air coming out is too cold or too warm, air pressure increases in the ducts and air will exit the vent at a higher speed in the next cell down the duct line. The severity of this problem increases as more inmates down the duct line block their cell vents. The Facilities Manager said that blocked vents not only make conditions in other cells more uncomfortable, they also cause damage to the HVAC system as a whole.

Photograph 4: Blocked Air Vent in a Cell



We were told by the Warden that inmates are not allowed to block vents; however, our interviews with staff and inmates indicate that this rule is not strongly enforced. Photograph 4 shows a makeshift cardboard damper that an inmate installed on his cell's air supply vent. In the inmate's reminder message, "Main line" refers to the Warden and Executive Staff's inspection of housing units. This message is consistent with our observation that MDC Brooklyn management staff, who inspect housing units every 2 weeks during main line, more strictly enforce this rule than do Correctional Officers who supervise the housing units daily.

Cold-weather Clothing

We found that, while some inmates had purchased thermal underwear and sweat suits from the MDC Brooklyn commissary prior to the fire, those inmates that could not afford to do so, or had not done so, especially those housed in units experiencing cold temperatures, likely felt the coldest among all MDC Brooklyn inmates.

Upon arrival at MDC Brooklyn, inmates receive two short-sleeved jumpsuits, two t-shirts, two pairs of boxer shorts, and two pairs of socks. Inmates also receive a bedroll that includes two blankets, two sets of sheets, and one pillowcase. We were told that many inmates purchase thermal underwear and sweat suits from MDC Brooklyn's commissary. However, only those inmates who earn money from prison jobs or have friends and family members who contribute to their commissary

account were able to make those purchases. Indigent inmates are unable to purchase these additional items. One indigent inmate, housed in Unit 6-2, complained to us that standard issue clothing was not sufficient to keep him warm during the power outage. Further, we found that because the computer system that manages commissary accounts and transactions was nonoperational due to the power outage, inmates that were new to the facility would not have been able to establish accounts and inmates with accounts would not have been able to make purchases.

The Associate Warden for Operations told us that, both before and during the power outage, some inmates had many more blankets than the two they were issued upon arrival at the facility. Inmates advised us that, when inmates leave MDC Brooklyn, they often give their standard issue blankets to their cellmate. The Associate Warden indicated that in most circumstances Correctional Officers allow inmates to keep the additional blankets. The Associate Warden also told the OIG that MDC Brooklyn distributed blankets during the week prior to the power outage when air handlers throughout the building were out of service. Further, the Warden told the OIG that MDC Brooklyn staff distributed all of the blankets in stock during the power outage as well as additional blankets received from other federal correctional institutions. In addition to BOP-sourced blankets, the City of New York delivered 400 blankets to MDC Brooklyn on Saturday, February 2.³⁰ Even with these additional blanket distributions, two inmates in seventh floor housing units told the OIG that they never received extra blankets.

Historical and Ongoing HVAC Challenges

We found that MDC Brooklyn facilities staff have historically struggled to regulate temperatures in the West Building. In particular, our review of temperature logs from the 43 days after the power outage, and inmate temperature complaints made the year before the power outage, indicate that building temperatures can greatly fluctuate and that inmates are more likely to experience uncomfortably hot temperatures. BOP staff told us that they have struggled to regulate temperatures in the West Building because MDC Brooklyn has not installed a BMS, which would continuously monitor building temperatures and HVAC equipment functionality (discussed below). With live temperature data, MDC Brooklyn management would be able to identify areas experiencing temperatures above or below the BOP target and make adjustments to HVAC equipment much more quickly than their current manual method for temperature measurement allows.

Temperature Measurements Taken After the Power Outage and Pre-Power Outage Temperature Complaints

Our review of MDC Brooklyn temperature logs for Monday, February 4 (the day after the power outage ended), through Tuesday, March 19, showed that on a few occasions temperatures dipped below the BOP target. However, more often

³⁰ However, we found that some of the city's blankets were not delivered to housing units until Sunday night, around the time power was restored.

temperatures far exceeded the BOP target. Specifically, 20 percent of all inmate housing temperature measurements were greater than 78 degrees (10 degrees above the BOP target) and 3 percent of all measurements were greater than 83 degrees (15 degrees above the BOP target).³¹ The measurements we took during our February 12, 2019 inspection of the West Building confirmed that temperatures in inmate housing areas can be much greater than the BOP target. We took measurements in all of the 2-Unit common areas and a randomly selected 2-Unit cell on each floor, as well as a cell in one of the two Special Housing Units (SHU), and found that temperatures in three of the five common areas and four of the six cells were 80 degrees or higher (see Table 2).

Table 2
OIG Temperature Measurements of MDC Brooklyn West Building Housing Areas, Evening of February 12, 2019

Floor-Unit	Common Area Temperature ^a	Cell Temperature ^a
4-2	81	81
5-2	77.5	77
6-2	81	81
7-2	79	79.5
8-2	80	80
SHU	N/A ^b	80

^a Cell temperatures are rounded to the nearest half degree.

^b There are no inmate common areas in the SHU.

Source: OIG temperature measurements, as specified

In response to inmate complaints that the showers were cold, the OIG team also tested shower temperatures in housing units. While water temperatures were cool when we turned on the showers, 20–30 seconds later water temperatures regularly approached 100 degrees. We found these temperatures to be in accordance with the BOP’s Facility Operations Manual, which states that hot water at a fixture must have a temperature range from 100 to 120 degrees.³²

MDC Brooklyn and OIG temperature measurements are also consistent with inmates’ statements to the OIG describing temperatures in the West Building as either uncomfortably hot or uncomfortably cold. We reviewed male inmates’ temperature-related complaints made between January 1, 2018, and February 6,

³¹ All 18 inmate housing areas experienced at least 1 temperature measurement greater than 78 degrees, and 11 inmate housing areas experienced at least 1 temperature measurement greater than 83 degrees. We have greater confidence in the accuracy of temperature measurements that MDC Brooklyn facilities staff took after the power outage, when they began using the hygrometer designed to measure ambient air temperature.

³² BOP Program Statement 4200.12.

2019 (Table 3). We found that inmates made three times as many complaints about hot temperatures than cold temperatures during the winter.

Table 3
MDC Brooklyn Male Inmate HVAC Complaints,
January 1, 2018–February 6, 2019

Year	Season	Hot Complaints	Cold Complaints
2018	Winter	24	7
	Spring	21	8
	Summer	33	-
	Fall	18	15
2019	Winter	3	3
Totals		99	33

Source: MDC Brooklyn inmate facilities complaints

MDC Brooklyn’s Lack of a BMS

A significant reason for MDC Brooklyn facilities staff having historically struggled to regulate temperatures in the West Building is that MDC Brooklyn has not yet installed a BMS, which would continuously monitor building temperatures. With this information, facilities staff could make system adjustments to regulate temperatures in the building without waiting for the results of less precise manual temperature measurements or complaints from inmates or staff. Further, because a BMS also monitors equipment functionality, facilities staff would be able to diagnose problems and make repairs and system adjustments more quickly than they were able during our inspection.

In addition to continuously monitoring temperatures and HVAC equipment, a BMS would also memorialize any adjustments or repairs that staff make to equipment. According to the MDC Brooklyn Facilities Manager, facilities staff do not always memorialize their equipment repairs or adjustments. As a result, staff may be unaware of adjustments made during an earlier shift and how those adjustments affected temperatures throughout the building. It is important that all relevant staff have comprehensive knowledge of equipment repairs and adjustments because we found that adjustments can dramatically overcorrect temperatures in a housing unit. For example, an equipment adjustment caused temperatures in a housing unit common area to rise from 63 to 82 degrees during a 16-hour period.

The BOP itself identified the need to update the HVAC equipment and install a BMS in the West Building at least 5 years prior to our inspection, when it began planning a large-scale facility energy conservation project. The final project plan includes 13 subprojects for upgrades to different building systems. The HVAC equipment upgrade is one of two subprojects not yet completed. As of April 2019, the BOP stated that the HVAC subproject work is nearly complete and that contractors are making final equipment upgrades and adding equipment and area

temperature sensors.³³ Once contractors install hardware, they will integrate BMS software with the sensors, allowing MDC Brooklyn staff to remotely monitor building temperatures and HVAC equipment functionality.

While we believe that the lack of a BMS is a significant reason why MDC Brooklyn facilities staff have historically struggled to regulate temperatures in the West Building, we identified other HVAC equipment issues that have also contributed to temperature regulation problems at MDC Brooklyn. For example, between December 2017 and June 2019 heating and cooling coils in 21 of the West Building's 58 air handler units burst, requiring repair or replacement and causing temporary heating and cooling challenges. Given the technical complexity of HVAC issues, we did not fully evaluate the causes of these other issues or assess their impact on the overall health of the West Building's HVAC system. We do, however, further describe the proximate effects of these other issues in [Appendix 2](#). We believe that the multitude of HVAC issues should cause the BOP to evaluate and promptly remediate the HVAC system issues at MDC Brooklyn.

OIG Conclusion

MDC Brooklyn's temperature regulation issues have affected and continue to adversely affect the conditions of confinement for inmates. Although we cannot state with certainty that HVAC subproject upgrades will completely ameliorate temperature regulation issues, we believe that they should significantly improve the speed with which MDC Brooklyn facilities staff are able to make system adjustments that bring temperatures in line with the BOP target. According to the BOP, prior to completing the HVAC subproject contractors and MDC Brooklyn facilities staff must retro-commission, or test, the HVAC system to ensure that upgraded components operate as intended. The MDC Brooklyn Facilities Manager, the Warden, the Northeast Regional Administrator, and the acting BOP Director all agreed that the availability of real-time data would allow MDC Brooklyn facilities staff to more proactively address localized HVAC issues.

Given MDC Brooklyn's longstanding challenges in regulating West Building air temperatures, it is vitally important that MDC Brooklyn use the retro-commissioning process to ensure that preexisting and newly installed HVAC equipment are capable of maintaining temperatures at BOP targets and that upgraded hardware and BMS software allow facilities staff to accurately monitor temperatures and equipment performance. If MDC Brooklyn's HVAC system and BMS software cannot do so, inmates are likely to continue to experience uncomfortable temperatures both well above and below BOP targets and MDC Brooklyn management will not have the information necessary to quickly adjust temperatures to align with BOP targets.

Further, if the upgraded HVAC system cannot maintain building temperatures at BOP targets throughout the year, we believe that the BOP should evaluate and promptly remediate the underlying HVAC equipment or other problems not addressed by the HVAC equipment upgrade subproject. While these issues are

³³ In recent years, MDC Brooklyn has updated or repaired air handlers and other HVAC system components and controls during routine maintenance and as part of the energy conservation project.

being addressed and corrected, MDC Brooklyn should add thermal underwear, sweat suits, or other cold-weather clothing to its list of standard-issue attire.

MDC Brooklyn Management Took Steps to Ensure the Safety and Security of the Facility During the Power Outage but Did Not Effectively Address Heating and Two Medical Issues

We found that MDC Brooklyn management took several steps designed to ensure the security of the facility and the safety of inmates and staff during the weeklong power outage, including confining inmates in their cells for extended periods of time.³⁴ Management did not, however, effectively address the temperature and two medical issues that arose during the week of the power outage. In this section, we address the steps taken, and not taken, by MDC Brooklyn management.

First, on the day of and the day after the fire, we found that MDC Brooklyn staff made management decisions consistent with the MDC Brooklyn Fire Contingency Plan and made appropriate notifications to BOP leadership. Second, because of the difficulty and dangers of supervising inmates in low lighting, MDC Brooklyn management decided to add an additional Correctional Officer to each housing unit, confine non-SHU inmates to their cells for extended periods of time, and keep SHU inmates in their cells for 24 hours a day for the duration of the power outage. Third, and also because of low lighting, MDC Brooklyn management decided to cancel legal and social visiting because Correctional Officers could not safely monitor interactions in the visiting room, which would have made it difficult to prevent potential violence or the introduction of contraband. However, as we discuss in the next section, MDC Brooklyn officials did not effectively communicate to inmates, their families, the courts, the defense bar, the public, and members of Congress either the decision to take this action or the reasoning behind the decision, thereby creating tensions both outside and inside the facility. Finally, the Warden and the acting BOP Director decided to not evacuate the West Building because, they believed, it was safer to manage inmates inside the West Building instead of evacuating them to another facility.

Initial Management Decisions Guided by MDC Brooklyn's Fire Contingency Plan

We found that MDC Brooklyn management followed relevant protocols defined in MDC Brooklyn's Fire Contingency Plan. First, as outlined in the plan, during and immediately after the fire on Sunday, January 27, MDC Brooklyn staff recalled inmates to their cells for an emergency census count and staff secured inmates in their cells while they performed a staff and inmate accountability check. The Associate Warden for Operations arrived at the facility soon after the power outage and briefed the Warden, who was away from the institution, about the

³⁴ In describing MDC Brooklyn's efforts to ensure the security of the institution, we limit our analysis to its internal management of inmates during the power outage. We did not assess MDC Brooklyn's preparation for and response to protests and other civil disturbances that occurred in and around MDC Brooklyn during and after the power outage.

situation. Second, consistent with the Fire Contingency Plan's requirement to maintain open lines of communication with the BOP Regional and Central Offices, on Sunday afternoon the Warden contacted the Northeast Regional Director and informed him of the situation. The BOP confirmed that later on Sunday the Northeast Regional Director informed the acting BOP Director of the situation.³⁵

Decision to Confine Inmates in Their Cells for Extended Periods

On Sunday, January 27, immediately following the fire and inmate accountability check, MDC Brooklyn's Associate Warden for Operations decided to keep inmates secured in their cells as staff was assessing the overall effects of the fire and power outage. The Warden explained that by Monday morning he understood which systems were and were not affected by the power outage and that he was confident that by adding a second Correctional Officer to each housing unit MDC Brooklyn could release non-SHU inmates from their cells and generally operate in safe and secure manner. According to MDC Brooklyn documentation, on the Monday following the fire, housing unit management staff also held town hall meetings, in every non-SHU housing unit, to discuss the situation with inmates.

Between Monday, January 28, and Thursday, January 31, according to our review of MDC Brooklyn records, as well as testimony we gathered from staff and inmates, staff generally released non-SHU inmates to common areas in the morning between 8 and 11 a.m., depending on the unit. This was later than the normal 6 a.m. release time. Staff secured the non-SHU inmates in their cells for the night at 7:30 p.m., 2 hours earlier than they would normally be secured, because MDC Brooklyn management decided that without sunlight interior emergency lighting was insufficient for Correctional Officers to safely monitor inmates. When released from their cells, non-SHU inmates could use unit showers, recreational facilities, and the unmonitored phone that connects to the Federal Defenders of New York. However, inmates were unable to use unit phones, laundry machines, and computers because they were nonoperational due to the power outage. As discussed above, because computers were nonoperational, MDC Brooklyn staff could not fulfill commissary orders.

MDC Brooklyn records indicate that on Friday, February 1, Correctional Officers released non-SHU inmates to eat breakfast and lunch but secured them for the rest of the day because three of MDC Brooklyn's four primary passenger elevators had stopped operating.³⁶ The Warden told the OIG that MDC Brooklyn has an informal agreement with the local chapter of the correctional employees

³⁵ The Fire Contingency Plan states that a command center can be established, at the Warden's discretion, to provide a central location for communication. The Warden did not believe that establishing a command center was necessary because the fire was quickly extinguished and, as required by the plan, the Warden had established an open line of communication with the Northeast Regional Director to discuss his plans for managing the institution. Both the Northeast Regional Director and the acting BOP Director told the OIG that throughout the week they were well informed of the situation at MDC Brooklyn and agreed that establishing a command center was not necessary.

³⁶ Due to inmate behavioral issues, 3 of 16 regular housing units were not released for lunch on Friday, February 1, and Correctional Officers delivered lunch to each cell.

union to secure inmates in their cells if only one elevator is operating. The purpose of this agreement is to give staff priority to use elevators to quickly respond to an emergency.

According to the Associate Warden for Operations, from Friday afternoon, February 1, until Sunday evening, February 3, when power was fully restored to inmate housing areas, MDC Brooklyn management decided to keep non-SHU inmates secured in their cells due to inmate behavioral problems. The Associate Warden told the OIG that by Friday evening inmates had grown frustrated with the power outage, disruptions to their regular schedule, and the inability to contact family and legal counsel. According to the Associate Warden, the willingness of non-SHU inmates to comply with the Correctional Officers' instructions further deteriorated as inmates heard and saw individuals outside the institution protesting the conditions of confinement inside. Unlike many BOP facilities, MDC Brooklyn is located in a densely populated public area, where the protestors and inmates could communicate with each other. Video footage captured by protestors and uploaded to social media platforms shows protestors using bullhorns to communicate with inmates, as well as inmates responding by banging on their windows.

While we recognize that an extended power outage can create an environment in which inmates are more likely to become agitated, improved communication with inmates could have potentially diminished disruptive behavior. Despite conducting the inmate town halls described above, we believe that MDC Brooklyn could have done more throughout the week of the power outage to keep inmates aware of the situation and the efforts to restore power and visiting. For example, some inmates and Correctional Officers told us that they were unaware of the circumstances surrounding the power outage or efforts to ameliorate the situation. Additionally, MDC Brooklyn staff issued its only written memorandum to inmates describing the situation on Saturday—6 days after the power outage began. Lastly, as we describe in the next section of this report, we believe that MDC Brooklyn and the BOP's failure to effectively communicate with stakeholders the conditions inside the jail contributed, in part, to the circumstances that led to protests outside of the facility, which in turn contributed to the inmate behavioral issues inside the jail that we described above.³⁷

With regard to inmates in the SHU, we found that for the duration of the power outage inmates were not afforded their daily 1-hour outdoor recreation, resulting in inmates being kept in their cells 24 hours a day. Other inmate management procedures in the SHU generally remained unchanged. A Lieutenant responsible for the SHU told us that he decided to suspend recreation because Correctional Officers could not see inside SHU cells. As a result, Correctional Officers preparing to restrain and escort inmates to the outdoor recreation space may not have been able to confirm that inmates would safely comply with staff instructions when the cell door was opened. The Warden agreed with the Lieutenant's decision and determined that SHU inmates would not have outdoor

³⁷ By "stakeholders," we mean inmates, their attorneys and families, the public, and members of Congress.

recreation for the duration of the outage. As a result, inmates in the SHU were secured in their cells beginning on the afternoon of January 27 until the morning of February 4, the day after power was fully restored.

Decision to Cancel Legal and Social Visiting

Due to the power outage, MDC Brooklyn canceled male inmate visiting in the West Building from the time of the fire on Sunday, January 27, until the morning of Sunday, February 3.³⁸ The Warden and other Correctional Officers told the OIG that during the power outage the West Building visiting room was too dark for staff to safely monitor inmates and their visitors, which would have made it difficult to prevent potential violence or the introduction of contraband; staff also could not use electronic contraband screening devices.³⁹ Also, due to additional staffing needs in the West Building, the Warden decided to cancel visiting in the East Building until Saturday, February 2. Both the Northeast Regional Director and acting BOP Director told the OIG that they were informed of and agreed with the Warden's decision to cancel visiting in both buildings.

The Warden also told us that, even though the East Building and its visiting room were not affected by the power outage, he decided against allowing West Building inmates to see visitors in the East Building visiting room for safety reasons. In particular, the Warden was unsure whether staff could safely transport West Building inmates to the East Building. He noted that staff would have had to escort inmates through the "link" connecting the West and East Buildings, which has multiple blind corners and was dimly lit due to the power outage. Additionally, the Warden told us that, even if he had decided that inmates could be transferred through the link, he would have had to divert Correctional Officers, who were providing additional supervision of inmates in the housing units, to transport inmates and monitor the visiting room.⁴⁰ However, the Warden stated that, despite the risks associated with moving inmates to the East Building for visiting purposes, on Thursday, January 31, he asked MDC Brooklyn staff to develop a contingency plan to host legal visiting in the East Building visiting room if power was not restored by Monday, February 4. According to the Warden, staff developed the

³⁸ The electrical contractor and facilities staff restored electricity to overhead lighting in the West Building visiting area in the late evening of Friday, February 1. After assessing the situation on Saturday, the Warden determined that MDC Brooklyn could safely host legal visiting in the West Building the next morning, Sunday, February 3. During the afternoon of February 3, protestors attempted to enter the West Building. As a result, MDC Brooklyn suspended visiting early that day. MDC Brooklyn resumed social visiting on Monday, February 4. MDC Brooklyn received a bomb threat on Monday, February 4, so the institution suspended visiting for part of that day.

³⁹ MDC Brooklyn's Captain told us that during the previous year there had been eight incidents of social visitors attempting to introduce contraband.

⁴⁰ In order to perform required searches of MDC Brooklyn male inmates before they left the building for court appointments or other reasons, MDC Brooklyn Receiving and Discharge (R&D) staff transported inmates through the link to the East Building R&D area. R&D staff are dedicated to this specific function, and the Warden told the OIG that he was not sure whether the institution could have safely managed the added visitation-related inmate movements.

plan and would have been prepared to transfer inmates had power not been restored.

MDC Brooklyn and BOP officials told the OIG that, despite visiting cancellations, the approximately 500 inmates who were represented by the Federal Defenders of New York could have spoken with their attorneys by using the functioning in-unit phones, which connect directly to the Federal Defenders of New York offices. Officials also stated that inmates who were not represented by the Federal Defenders of New York could have requested to use the functioning staff phones to contact legal counsel, if necessary. The MDC Brooklyn inmate handbook states that inmates may request to use staff phones to make unmonitored legal calls.⁴¹ BOP management also told us that inmates with scheduled social visits could have contacted family members using staff phones. However, another inmate we interviewed told us that he was not aware this was an option. According to MDC Brooklyn management, one inmate used a staff phone to make a legal call during the power outage.

BOP regulations provide that a Warden may restrict inmate visiting “when necessary to ensure the security and good order of the institution.”⁴² While these regulations and BOP policy allow Wardens to temporarily cancel legal and social visiting for security-related reasons, as was the case during the MDC Brooklyn power outage, we found that neither BOP regulations and policy nor contingency plans offer institutions guidance about how long an institution can cancel in-person legal visiting for pretrial inmates. When we asked the acting BOP Director whether there was a set amount of time after which institutions need to make alternative arrangements for legal visiting, he declined to give a specific answer but stated that, if an attorney communicated to the BOP that it was necessary to speak with an MDC Brooklyn inmate, the BOP would have found a way to make it happen.

Decision Not to Evacuate the West Building and Provision of Food and Medical Care

We found that the MDC Brooklyn Warden and BOP management decided not to evacuate inmates to the East Building or another facility because they believed that managing inmates in the West Building was the safest available option. First, the Warden explained that because the fire did not affect life-safety systems, such as fire alarms and medical equipment on Priorities 1 and 2, he believed that Correctional Officers could continue to manage inmates safely in the West Building.

⁴¹ See 28 C.F.R. § 540.102 and BOP Program Statement 5264.08, Inmate Telephone Regulations, February 11, 2018. “The Warden shall notify an inmate of the proper procedures to have an unmonitored telephone conversation with an attorney.”

⁴² See 28 C.F.R. § 540.40 and BOP Program Statement 5267.09, Visiting Regulations, December 10, 2015. In addition, 28 C.F.R. § 551.117 states, “The Warden shall provide the opportunity for pretrial inmate-attorney visits on a seven-days-a-week basis.” In a memorandum of law, government counsel acknowledged the 28 C.F.R. § 551.117 requirement but asserted that the body of statutes and regulations governing visitation, when “read together, grant each individual Warden the authority to determine whether, in a particular instance, issues concerning institutional safety may justify temporary restrictions of inmate visiting, including by attorneys.” Memorandum of Law in Opposition to Plaintiff’s Motion for a Preliminary Injunction, at 20 and 21, *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons and Warden Herman Quay* (E.D.N.Y., filed Feb. 14, 2019).

Second, the Warden explained that Correctional Officers can more safely manage inmates of all security levels in the West Building because its housing units have cells, which allows Correctional Officers to separate inmates if necessary. The Warden noted that the East Building, which is designed to house female inmates, has an open layout. He also told the OIG that, even if he were to transfer male inmates to the East Building, he could transfer only about 600 to 700. The remaining inmates would have had to be transferred to another facility.

The acting BOP Director told the OIG that a full or partial evacuation to another facility would have been an option of absolute last resort because quickly moving large numbers of inmates presents safety risks to staff and inmates, as well as an increased public safety risk (e.g., possible escapes). Further, he stated that, had the BOP moved inmates to another institution, that institution would likely have been outside the New York City metropolitan area and it would have been difficult, or impossible, for relocated inmates to attend court hearings as scheduled. The acting BOP Director added that the initial decision not to evacuate the inmates was justified because MDC Brooklyn was able to provide food and medical attention inside the West Building.⁴³

Delivery of Food

As noted above, meals are prepared in the West Building's central kitchen and Correctional Officers deliver the meals to each unit via large carts. To assess food delivery, we reviewed surveillance video footage to determine whether MDC Brooklyn staff made three daily meal cart deliveries to a sample of 10 of the 16 regular housing units and 1 of the 2 SHU units during the power outage. We found that the food services staff made all required meal cart deliveries, which gave us reasonable assurance that inmates at MDC Brooklyn received meal deliveries during the power outage. During the week, staff generally delivered meal carts on their normal schedule. However, over the weekend, staff delivered meal carts to some housing units later than is normally scheduled.

Media reporting included inmate claims that they were served cold food during the power outage. Correctional Officers and inmates who prepare food told us that, other than breakfasts that are normally served cold, and the dinner served immediately following the power outage, on Sunday January 27, all meals were prepared hot. Some inmates complained to us that during parts of the week their food had cooled before it was served to them. Based on discussions with inmates and Correctional Officers, we believe this can be attributed to the fact that, when inmates were secured in their cells, staff had to deliver meals to more than 100 inmates, throughout the housing unit, which can take longer than the normal

⁴³ The acting BOP Director told us that he did not have any discussions with regional staff about evacuating inmates until the weekend of February 2 and 3, when he told the Northeast Regional Director to begin identifying institutions to which the BOP could transfer inmates in the event that MDC Brooklyn was unable to restore power by Monday, February 4. The acting BOP Director explained that external criticism of the BOP's management of the situation in part contributed to his decision to begin planning for an evacuation had the power outage continued into the following week.

process whereby inmates line up to be served at a central location in the housing unit.

Inmate Medical Needs

According to MDC Brooklyn medical staff we interviewed, including the Chief of Health Services, an MDC Brooklyn doctor, pharmacist, nurse, and Chief Psychologist, MDC Brooklyn health professionals continued to see inmates in the medical office, respond to medical and psychiatric emergencies within housing units, and distribute medication as necessary.⁴⁴ The OIG was able to, in part, corroborate these statements by reviewing medical treatment records and by speaking with inmates and other staff members.

Media coverage at the time of the power outage called into question the efficacy of medical and psychiatric care at MDC Brooklyn. Additionally, some inmates complained to us that they did not receive appropriate care. To assess these concerns, we focused our review on MDC Brooklyn's distribution of prescription medication during the power outage. Time constraints did not allow us to evaluate the efficacy of medical care provided to a particular inmate or the population as a whole. We reviewed camera footage from the same 10 regular housing units and 1 SHU unit we sampled in our review of food delivery to determine whether MDC Brooklyn Health Services staff made twice-daily insulin and other medication (pill) deliveries. We found that Health Services staff made all but one of the sampled insulin deliveries and all but two of the sampled pill deliveries between the afternoon of January 27 and the evening of February 3. The MDC Brooklyn Health Services Administrator accounted for the missing insulin delivery and two missing pill deliveries by explaining that the Health Services staff was unable to complete the morning insulin and pill delivery for Unit 4-2 and the pill delivery for Unit 4-3 on Saturday, February 2, due to medical emergencies elsewhere in the building, unrelated to the power outage. Although Health Services staff requested assistance from off-duty medical staff, they told us that responding staff were not able to arrive at the institution in time to safely administer insulin and other medications before evening insulin line and pill line.

In addition to twice daily pill and insulin deliveries, during which Health Services staff directly administer the required doses, Health Services staff also normally deliver multiple doses of certain medications to inmates who administer the medication to themselves over a number of days. MDC Brooklyn Health Services staff refer to these medications as "self-carry." Unlike the twice daily pill line and insulin line, inmates are responsible for requesting self-carry refills from the institution pharmacy themselves, typically through the monitored computer

⁴⁴ MDC Brooklyn health professionals were unable to treat inmates in satellite medical examination offices located on inmate housing floors, but they were able to transfer inmates to the West Building's primary medical office. Additionally, the Health Services Administrator told us that, due to the power outage, MDC Brooklyn's medical testing laboratory was not available for use on Sunday, January 27, and Monday, January 28.

system. According to MDC Brooklyn's Health Services Administrator, inmates are advised to request refills 5 days before their supply runs out.

Inmates told the OIG that they were either unable to or unaware of how to request prescription refills during the power outage, and media reports state that some inmates were not provided prescriptions during the power outage. During the power outage, the facility's computer reorder system was not operational. We were told that inmates had alternative means to make refill requests during the power outage. First, the MDC Brooklyn inmate handbook, provided to all inmates upon entry to the institution, states that any type of request to staff can be handwritten on a standard BOP form available in common areas in all housing units. Second, Health Services staff stated that inmates could have directly asked for a refill when staff was distributing insulin and pills on a twice daily basis. Health Services staff also said that inmates could have requested a refill when they were secured in their cells because Health Services staff had to walk through the housing units when making cell by cell deliveries.

Although our surveillance video footage observations give us confidence that MDC Brooklyn staff continued to deliver medication during the power outage, we determined that 15 inmates who used continuous positive airway pressure (CPAP) machines were unable to do so for the first 6 days of the power outage because in-cell electrical outlets were nonoperational and because institution staff did not provide alternative accommodations. While members of Congress and MDC Brooklyn officials were touring the facility on Saturday, February 2, an inmate communicated the problem to a member of Congress and the MDC Brooklyn Warden. Upon learning of the issue, the Warden asked the institution's Health Services Department to determine how many inmates required CPAP machines. The Warden then directed his staff to prepare a housing unit for those inmates in the East Building and offered to move the inmates there. Of the 15 inmates requiring CPAP machines, 9 opted to move to the East Building for the duration of the power outage (which ended the next day). According to MDC Brooklyn medical records that we reviewed, none of the 15 inmates experienced a medical emergency that week because he was unable to use a CPAP machine during the outage.

Our review of inmate complaints indicates that two inmates had previously alerted staff about this issue during the winter of 2018, when their in-cell electrical outlets were temporarily nonoperational. The Warden stated that it was an oversight for the institution not to have acted more quickly to identify inmates who required a CPAP machine and to ensure they had access to electricity during the power outage. We determined that the prior complaints provided MDC Brooklyn staff with the information necessary to develop a procedure to accommodate inmates who require the use of CPAP machines during a power outage, but the staff failed to do so.

OIG Conclusion

We found that MDC Brooklyn management took several steps to ensure the safety and security of the institution. For example, the Warden followed the

institution's fire contingency plan, which included notifying regional BOP management and the BOP's Central Office of the situation. The Warden also made the judgment, which was supported by the acting BOP Director, that the jail should not be evacuated because doing so would have presented a greater risk than keeping the inmates at MDC Brooklyn. While this judgment was not unreasonable, we found certain significant flaws in the facility's management during the week of the power outage.

First, as described in the previous section, the BOP did not effectively handle preexisting temperature regulation problems at the facility, which became an issue once again during the power outage because of the extremely cold temperatures outside. Moreover, once management decided not to evacuate the facility, in light of the extremely cold weather that was forecast for that week in New York, management should have recognized the importance of ensuring that inmates had sufficient warm clothing and blankets given that the commissary was closed and that indigent inmates especially were unable to purchase additional clothing for themselves. Management's failure to provide warm clothing and blankets triggered serious concerns both inside and outside the facility, as we discuss further in the next section.

Second, although the decision to cancel in-person legal and social visiting during the power outage due to security concerns was not unreasonable under the circumstances, we believe that MDC Brooklyn could have better prepared for this contingency by having a contingency plan available to use once it became clear that the power outage would not be resolved promptly. Instead, MDC Brooklyn officials told us that it was not until at least 4 days into the power outage that they were prepared to consider alternative arrangements. We therefore recommend that the BOP create contingency legal and social visiting plans and incorporate those plans into existing BOP policy and contingency plans in the event of future institutional disruptions to visiting. We also recommend that the BOP update its visitation policies to describe alternative legal visiting arrangements, when legal visiting is restricted under 28 C.F.R. § 540.40, to ensure that pretrial inmates have access to legal counsel, as mandated under 28 C.F.R. § 551.117.

Third, we found that, while medical rounds continued during the week of the power outage, preparations were not made to accommodate inmates who used CPAP machines. The issue was addressed only when an inmate told the Warden and a member of Congress about the problem 6 days into the power outage. Fortunately, none of the 15 inmates who needed a CPAP machine experienced a medical emergency. However, unless the BOP requires institutions to maintain a list of inmates who use personal electronic medical devices and develops plans for inmates to use those devices in the event of a power outage, the BOP will be unable to provide those inmates with medical care necessary to prevent a medical emergency. Adding this item to a contingency plan should help BOP staff account for such inmates and ensure that they receive the care they need.

Fourth, although MDC Brooklyn management made some efforts to communicate the cause and expected duration of the power outage, MDC Brooklyn could have done more to keep inmates informed. Further, we found that not all

inmates were aware that they had an alternative method to contact legal counsel and request prescription refills during the power outage. Given these communication deficiencies, we believe that MDC Brooklyn, as well as all BOP facilities, should evaluate current procedures for communicating to inmates the causes of and efforts to resolve problems that significantly affect institution operations and conditions of confinement, as well as alternative methods for accessing vital services when telephones and inmate computer systems are unavailable.

The BOP Did Not Communicate the Status of Conditions at the Facility During the Power Outage or the Reason for Canceling Legal and Social Visits in a Sufficient or Timely Manner

We found that, throughout much of the power outage, BOP and MDC Brooklyn management failed to provide any meaningful information to defense counsel, the courts, family members of inmates, the public, and members of Congress about the conditions at the facility and the decision to cancel legal and social visits during the power outage. This lack of information and associated confusion about the nature of the situation resulted in disruption by inmates inside the facility, protests outside the facility, congressional scrutiny, and rumors and speculation about the seriousness of conditions at the facility. Specifically, the protests, which began 6 days after the fire, were prompted by concerns that there was no heat in the jail. These protests contributed, in part, to inmate disruptions inside the facility. Concerns about the situation at MDC Brooklyn also led to multiple judicial actions, including a lawsuit filed against the BOP (see [Appendix 3](#)). During the judicial proceedings, federal judges and defense attorneys cited the lack of information from the BOP and sought to ascertain more information about conditions of confinement at MDC Brooklyn and the status of legal visiting. Members of Congress also questioned the lack of information and, as a result, requested that the OIG conduct this review and inspection.

In discussing these issues with BOP and MDC Brooklyn management, we concluded that they did not recognize, as the power outage lingered during the week and the facility continued to experience temperature regulation issues due to the extremely cold weather, the importance of addressing concerns about the heating and overall conditions in the institution. Similarly, management did not recognize how the failure to provide such information could lead to external stakeholders concluding that conditions inside the institution might be dangerous. BOP and MDC Brooklyn management did not demonstrate an appropriate level of appreciation for the need to provide information about the status of legal and social visiting. We also noted that MDC Brooklyn contingency plans do not provide sufficient guidance, in the event of a power outage or any other institutional emergency, on how and when staff should alert and update external stakeholders about disruptions to visiting and the conditions of confinement.

Absence of a BOP Contingency Plan for External Communication

The BOP's Correctional Services Procedures Manual requires all BOP facilities to have contingency plans for 18 specific emergency events, but the BOP does not

provide institutions with guidance or instructions about how and when to publicly address with external stakeholders disruptions to conditions of confinement or to legal and social visiting.⁴⁵ For example, the primary guidance that MDC Brooklyn's Fire Contingency Plan offers staff is that "the Public Information Officer will prepare a statement for the media when warranted." We believe that more prescriptive language that reiterates and expands on language in the BOP's News Media Contacts Program Statement may have helped MDC Brooklyn management and the BOP apply the same crisis-management approach to external communication efforts that it did to ensuring the safety and security of the facility during the power outage.⁴⁶

Additionally, we found that none of the 18 BOP-required contingency plans cover a power outage. MDC Brooklyn's then Warden told the OIG that he did not previously see the need for a power outage contingency plan because the availability of generators diminished the need for such a plan. However, as we described in the [Introduction](#), fire damage to the Priority 3 switchgear rendered the generators nonoperational. While we do not believe that the absence of a power outage contingency plan significantly impacted MDC Brooklyn's ability to secure the facility during the power outage, we did identify one area in which a power outage contingency plan would have helped MDC Brooklyn staff better ensure inmate safety. Specifically, a reminder to staff to determine whether inmates could use in-cell outlets to power electric medical devices likely would have compelled staff to identify and accommodate inmates who used CPAP machines more quickly than they did during MDC Brooklyn's power outage.

In the following sections, we provide greater detail about how MDC Brooklyn's failure to issue sufficient information to defense counsel, the courts, inmates' family members, the public, and members of Congress caused these stakeholders to lose confidence in MDC Brooklyn's ability to safely manage inmates inside the institution.

Communication with Defense Counsel

We found that the BOP did not provide timely and complete information to defense counsel about the reasons why visiting was canceled each day of the power outage, and when alternative visiting arrangements would be available. As a result, attorneys for the Federal Defenders of New York, who were already frustrated by disruptions to legal visiting prior to the power outage (an issue we describe below), pursued court intervention to determine why legal visiting was canceled and whether inmates were being safely managed.

⁴⁵ MDC Brooklyn provided the OIG with a copy of all of its 18 contingency plans: Fire, Work/Food Strike, Disturbance, Escape, Internal Hostage, Adverse Weather, Bomb Threat, External Hostage, Internal Search, Civil Disturbance, Institution Evacuation, Inmate Transportation, Airlift, Safe Harbor, National Lockdown Procedures, Pandemic Illness/Disease, Active Shooter, and External Assault.

⁴⁶ BOP Program Statement 1480.05, News Media Contacts, September 21, 2000.

During an OIG interview and in various court filings, an Attorney-in-Charge for the Federal Defenders of New York expressed concern that MDC Brooklyn did not provide sufficient information about the status of legal visiting and the conditions of confinement during the power outage.⁴⁷ The Attorney-in-Charge told the OIG that the Federal Defenders received many calls from inmates about the fire, power outage, lockdowns, and heat issues. Although Federal Defender staff tried throughout the week to get more information from BOP counsel, we found that BOP and MDC Brooklyn officials' emails to the Federal Defenders did not even acknowledge that there had been a fire. The most descriptive of the BOP's emails, which BOP counsel wrote on Monday, January 28, and Tuesday, January 29, stated only, "I do not have a lot of details at this time, but I have been informed that heat is operational and that inmates are out of their cells in the units" and "no inmates or staff were injured during the incident, which occurred in an area I understand no inmates were present." The Attorney-in-Charge explained to us that, if MDC Brooklyn management had proactively explained that an electrical fire and power outage had occurred, it could have alleviated some of her and other stakeholders' concerns.

BOP counsel emailed the Federal Defenders of New York on each of the first 4 days of the power outage during which legal visiting would be canceled.⁴⁸ However, BOP counsel did not consistently provide sufficient advance notice. For example, on Tuesday, January 29, it was not until 10:30 a.m., 2 1/2 hours after legal visiting was regularly scheduled to begin, that the BOP informed defense counsel that visiting would be canceled that day. Then, on Wednesday, January 30, BOP counsel emailed defense counsel approximately 20 minutes before visiting was regularly scheduled to begin that visiting would be canceled that day. Later that day, BOP counsel sent a second email to the Federal Defenders to inform them that MDC Brooklyn hoped to reestablish legal visiting the following week and that there would be no more updates until MDC Brooklyn was prepared to resume visiting.

According to the Attorney-in-Charge for the Federal Defenders of New York, late or last-minute notification is disruptive because attorneys have large caseloads and are not able to easily reschedule client meetings following late or last-minute cancellations. The Attorney-in-Charge also explained that defense counsel are often accompanied by interpreters who help communicate with inmates who speak a different language and that it can be difficult to reschedule a meeting with an interpreter. Further, the Attorney-in-Charge said that inmates are often unaware of the reasons why visiting is canceled and late or last-minute cancellations can erode the trust between an attorney and an anxious client who is eager to meet with his attorney and formulate a defense strategy.

⁴⁷ In *Re the Matter of Conditions at the Metropolitan Detention Center, West Building, Brooklyn, New York*, Administrative Order 2019-03 (E.D.N.Y., Feb. 1, 2019) and Declaration of Deirdre D. Von Dornum, at 3, *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons and Warden Herman Quay*.

⁴⁸ In using the term "BOP counsel," we are collectively describing two people: MDC Brooklyn's local counsel and the local counsel's supervisor, whose duty station is at Metropolitan Correctional Center New York.

The MDC Brooklyn Executive Assistant told us that the institution’s external website advised the public that legal visiting was canceled. However, the BOP was unable to tell us what day during the week of the power outage it updated the website or whether the notification stated when the cancellations began or when they would end. As a result, we concluded that such a website advisement would likely not have been helpful because defense counsel, many of whom arrive at the institution at 8 a.m. for client meetings, would not have known whether the notification applied to the prior or current day.

The Attorney-in-Charge told us that the cancellations caused by the power outage were part of a larger, ongoing issue because MDC Brooklyn had previously canceled or delayed visiting in January 2019 for reasons unrelated to the power outage. In a court declaration, counsel representing the Federal Defenders of New York stated that MDC Brooklyn had canceled or substantially delayed legal visiting on 8 days prior to the power outage (January 4, 5, 6, 9, 10, 11, 14, and 21.)⁴⁹ In Table 4, we show the dates from January 1 through February 4, 2019, that MDC Brooklyn confirmed that it had canceled or delayed visiting, as well as the stated reason for the cancellation or delay.

Table 4
Dates that MDC Brooklyn Canceled or Delayed Visiting,
January 1–February 4, 2019

Date	Affected Building	Cause
January 4–5	West	Power outage
January 11 (partial)	West	Institutional lockdown for a generator test
January 14	West and East	Staff shortages related to government shutdown
January 21 (partial)	West and East	Delayed due to brief power outage
January 27–February 2	West	Power outage caused by electrical fire
January 28–February 1	East	Staff reassignments related to the power outage
February 3 (partial)	West	Protest activity
February 4 (partial)	West and East	Bomb threat

Note: Most MDC Brooklyn staff were required to work, without pay, from December 22, 2018, to January 25, 2019, the dates of the federal government shutdown. According to MDC Brooklyn staff rosters, 50 staff members called out sick on Monday, January 14, and an average of 11 staff members called out sick on the three Mondays preceding the government shutdown.

Sources: MDC Brooklyn legal and social visiting logs and other documentation

On Friday, February 1, frustrated by cancellations to legal visiting and unsatisfied with the BOP’s response to inquiries about the conditions of

⁴⁹ See Declaration of Sean Hecker in Support of Plaintiff’s Application for Temporary Restraining Order and Preliminary Injunction, at 2, *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons and Warden Herman Quay*.

confinement, the Attorney-in-Charge requested and received permission from the Chief Judge in the Eastern District of New York (EDNY) to tour MDC Brooklyn's West Building to assess the conditions of confinement.⁵⁰ The following Monday, the Federal Defenders of New York filed a lawsuit against the BOP requesting, among other relief, a temporary restraining order requiring MDC Brooklyn to reinstate legal visiting. In their complaint, the Federal Defenders stated that the BOP's refusal to provide detailed information about "cancellations to defense counsel, as well as the dire conditions in which MDC inmates find themselves, have only made it more difficult for inmates to access their attorneys."⁵¹ This was just one of several legal actions related to the power outage and the BOP's handling of it. In [Appendix 3](#), we provide a list of judicial actions relevant to the MDC Brooklyn power outage.

Communication with Courts

We also found that the BOP counsel did not proactively communicate to federal district court representatives sufficient information about why legal visiting had been canceled and inmate conditions of confinement during the power outage. The acting BOP Director echoed this conclusion when he told the OIG that MDC Brooklyn should have more proactively communicated to the courts information about the conditions of confinement during the power outage.

Through our review of BOP and MDC Brooklyn emails, we found that the BOP counsel included only two Southern District of New York (SDNY) federal court administrative employees, and no employees from the EDNY federal court, on emails sent to the Federal Defenders of New York.⁵² Further, BOP representatives did not have a substantive conversation with senior court officials until the morning of Friday, February 1, when MDC Brooklyn's Warden briefed the SDNY Court Executive about the conditions at MDC Brooklyn at the Court Executive's request.⁵³ We found that BOP representatives did not provide federal judges or administrative staff in the EDNY with proactive information about the conditions at MDC Brooklyn.

⁵⁰ EDNY, Administrative Order 2019-03.

⁵¹ Complaint for Declaratory and Injunctive Relief, at 9, *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons and Warden Herman Quay*.

⁵² The BOP confirmed that the communications detailed in this section are the only communications that the BOP made to SDNY and EDNY court employees. Citing potential conflicts due to ongoing litigation, the Chief Judge in the EDNY declined to have judges and court officials answer the OIG's questions about the sufficiency of MDC Brooklyn's communication with the courts. We were also unable to speak with court officials in the SDNY because the court did not respond to our inquiry for comment. When discussing the sentiments of court officials, we therefore rely on publicly available court documents cited throughout this section.

⁵³ BOP and MDC Brooklyn counsel courtesy copied the Assistant Director of Criminal Case Operations from the SDNY Federal Court and the Deputy Chief Probation Officer from the SDNY Federal Probation Office on some of MDC Brooklyn's legal visiting status emails to defense counsel. MDC Brooklyn counsel also responded to an email request for more information about the situation at MDC Brooklyn from the Executive Assistant to the SDNY Court Executive on Wednesday, January 30.

Therefore, judges in the district learned about the fire and power outage when defense counsel raised the issue during court hearings.⁵⁴

In three different legal proceedings, judges in the EDNY and SDNY expressed concerns about the sufficiency of information that the BOP provided about the status of legal visiting and the inmate conditions of confinement during the power outage. First, on Friday, February 1, the Chief Judge in the EDNY granted the Federal Defenders of New York Attorney-in-Charge permission to tour MDC Brooklyn's West Building "in order to obtain current and comprehensive information on the conditions."⁵⁵ Second, on the same day, a judge in the SDNY, unsatisfied by the information provided by the BOP, ordered an evidentiary hearing for the following week to determine whether the power outage had made MDC Brooklyn uninhabitable.⁵⁶

Finally, on Monday, February 4, another judge in the EDNY stated "I don't trust the representations coming out of the BOP" before granting the Federal Defenders of New York's request for a temporary restraining order.⁵⁷ The temporary restraining order required MDC Brooklyn to reestablish legal visiting and in the future inform the court within 2 hours if legal visiting was canceled.

Communication with Inmates' Families and the Public

We also found that the BOP did not issue proactive information to inmates' families and the public about the situation at MDC Brooklyn. The BOP issued its first press release 6 days after the electrical fire, in response to news media reporting that highlighted criticisms of MDC Brooklyn's management of the situation.⁵⁸ One news report stated, "More than a thousand inmates have been

⁵⁴ On Tuesday, January 29, and Thursday, January 31, an attorney representing an MDC Brooklyn inmate described his understanding of the power outage and inmate conditions of confinement to a judge in the EDNY. See Attorney Affidavit, at 1 and 3, *United States v. Dino Sanchez* (E.D.N.Y., filed Jan. 31, 2019). On January 31, another attorney representing another MDC Brooklyn inmate described his understanding of the power outage and inmate conditions of confinement in a letter to a judge in the SDNY. See Status Conference, at 2, *United States v. Segura-Genao* (S.D.N.Y., filed Feb. 1, 2019).

⁵⁵ EDNY, Administrative Order 2019-03.

⁵⁶ Status Conference, at 9, *United States v. Segura-Genao*. According to the transcript of the February 1 hearing, MDC Brooklyn counsel could not definitively state whether there was or was not a relationship between the absence of power and the heating issues in the facility. During the evidentiary hearing on February 5, the judge toured MDC Brooklyn's West Building.

⁵⁷ Transcript of Civil Cause for Temporary Restraining Order Before the Honorable Lashann Dearcy Hall, United States District Judge, at 25, *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons and Warden Herman Quay*.

⁵⁸ On Saturday, February 2, the BOP issued its first press release about the fire and power outage. The press release stated that a fire had caused damage to electrical equipment and had resulted in a partial power outage and that MDC Brooklyn estimated that power would be restored by Monday, February 4. The press release further stated that "inmates have hot water for showers and hot water and sinks in the cells." On Sunday, February 3, the BOP updated the press release to explain that the power outage did not affect heat in the building. The Deputy Director of the DOJ Office of Public Affairs later issued a press release stating that electrical power was restored to MDC Brooklyn at approximately 6:30 p.m. We provide the press releases in Appendices 4, 5, and 6, respectively.

stuck in freezing cells at a federal jail on the Brooklyn waterfront that has had limited power and heat for at least this week, according to federal public defenders and leaders of the union representing the jail's corrections officers."⁵⁹ As described above, the power outage did not affect heating at the institution; rather, the heating issues during the week of the power outage were the result of preexisting and unmitigated temperature regulation issues that were exacerbated by extremely cold temperatures. The lack of proactive information from the BOP about the cause of the heating issues and the effects they were having on some, but not all, of the inmates in the West Building contributed to public confusion about the power outage's effect on conditions in the facility. Inmates' family members experienced additional confusion because they did not have complete information about the expected duration of social visiting cancellations. Additionally, because inmate phones were not working, inmates could not call their families to update them on their condition during the outage.

We found that the BOP's decision not to provide proactive information is inconsistent with guidance provided in the BOP News Media Contacts Program Statement, which states, "the Warden shall promptly make announcements stating the facts of unusual, newsworthy incidents to local news media," which includes "institution emergencies."⁶⁰ In addition, the MDC Brooklyn Fire Contingency Plan grants institution management the authority to prepare a statement for the media and to establish a media center for making proactive statements, if management deems it necessary.

The Warden and the acting BOP Director told the OIG that, in retrospect, they believe they could have done more to communicate with the media earlier in the week. But they were also unsure of the purpose of a proactive statement because, in their opinion, inmate management operations were functioning safely. The Assistant Director of the BOP's Information, Policy, and Public Affairs Division (IPPA) told us that she did not believe that the power outage warranted a proactive media statement. She acknowledged that BOP employees may be less alarmed than the public by a power outage because BOP employees may view seemingly disruptive events as fairly ordinary occurrences at BOP institutions. Indeed, we found that the BOP's IPPA was not even aware of the situation at MDC Brooklyn until the morning of Friday, February 1, when it received a request for comment (sent at 11:12 p.m. Thursday night) from *The New York Times*. The IPPA did not

⁵⁹ Following the publication of this article, a union official testified that, when describing conditions at MDC Brooklyn to *The New York Times*, she was describing cold temperatures that MDC Brooklyn experienced prior to the power outage, not during the power outage. Another union official described cold temperatures at the facility between January 14 and 16, also not during the power outage. Transcript of Hearing before the Honorable Analisa Torres, United States District Judge, at 66 and 80, *United States v. Segura-Genao*.

⁶⁰ See BOP Program Statement 1480.05

issue a public statement before *The New York Times* published its first article Friday morning.⁶¹

The Deputy Director of the DOJ Office of Public Affairs, who assisted the BOP in developing press releases in response to media inquiries about the power outage, told the OIG that the BOP did not initially view the situation as an operational crisis. As a result, he explained, the BOP was slow to realize that news reports about the fire and power outage were creating a media crisis. He added that in situations such as MDC Brooklyn's fire and power outage, it is always better to anticipate the media response and release factual information earlier rather than later.

As we discussed above, we believe that MDC Brooklyn's and the BOP's failure to effectively communicate with the public about the conditions inside the jail contributed, in part, to the circumstances that led to protests that occurred outside of MDC Brooklyn on Saturday, February 2, and Sunday, February 3. Protests intensified on Sunday as protestors attempted to enter the West Building. Correctional Officers responded by deploying pepper spray to disperse the crowd. Video of these events, published on social media platforms, further intensified media scrutiny of the BOP's management of the situation at MDC Brooklyn and, as mentioned by MDC Brooklyn's Associate Warden for Operations, contributed to inmates' behavioral issues inside the building.

Members of Congress

On Friday, February 1, after learning of the situation at MDC Brooklyn from *The New York Times* article, Congresswoman Nydia Velázquez stated on Twitter that she would visit MDC Brooklyn (see Figure 2 below). She toured the facility later that afternoon. On Saturday, February 2, Congresswoman Velázquez again toured the facility, along with Congressman Jerrold Nadler and Congresswoman Carolyn Maloney.⁶²

During the Saturday tour, the members of Congress learned that the electrical repair firm had largely completed its work but had left the facility to attempt to source a final part before it could restore power. At the time, the repair firm did not anticipate that it would be able to source the part until Monday, February 4. After learning that the repair firm had left the facility, Congressman Nadler made a public statement on Twitter (see Figure 2 below) indicating that he believed that prison officials lacked urgency in their efforts to restore power.

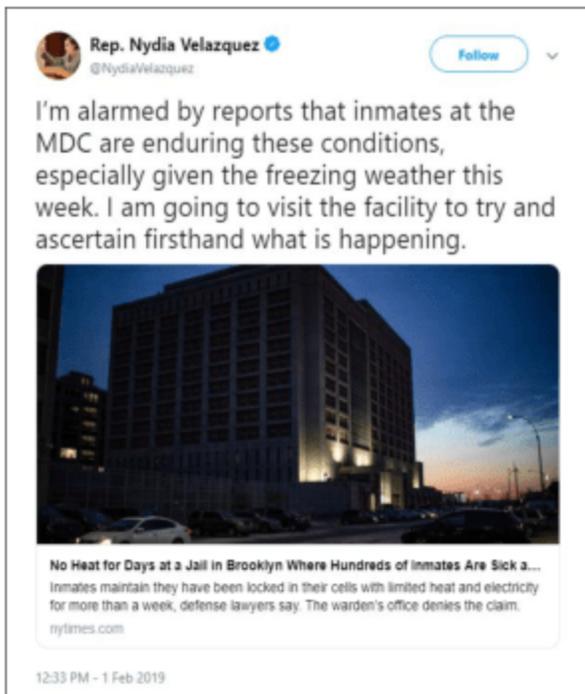
⁶¹ Annie Correal, "[No Heat for Days at a Jail in Brooklyn Where Hundreds of Inmates are Sick and Frantic](https://www.nytimes.com/2019/02/01/nyregion/mdc-brooklyn-jail-heat.html)," *The New York Times*, February 1, 2019, www.nytimes.com/2019/02/01/nyregion/mdc-brooklyn-jail-heat.html (accessed September 17, 2019). The original online version included a brief comment from the MDC Brooklyn Public Information Officer. An updated version, published by the following day, included a brief comment from the IPPA.

⁶² MDC Brooklyn is in New York's Seventh Congressional District, which is represented by Congresswoman Velázquez. New York's Tenth and Twelfth districts, represented by Congressman Nadler and Congresswoman Maloney, respectively, also encompass sections of Brooklyn. Congresswoman Velázquez and Congressman Nadler also toured the facility on Saturday, February 2, and Sunday, February 3. Finally, Congresswoman Velázquez toured the facility on Monday, February 4, with the acting BOP Director.

According to the acting BOP Director, then acting Attorney General Matthew Whitaker and then Deputy Attorney General Rod Rosenstein were made aware of the situation at MDC Brooklyn by at least Saturday, February 2. That day, after fielding many calls from concerned members of Congress, Rosenstein told the acting BOP Director to search throughout the country for the required part, and, if necessary, fly the part to New York. As we explained earlier in the report, the electrical repair firm acquired the necessary part over the weekend and restored power on Sunday, February 3.

Figure 2

Selected Public Officials' Twitter Statements on the Situation at MDC Brooklyn



Source: Twitter



OIG Conclusion

We found that MDC Brooklyn and BOP management failed to recognize the importance, as the power outage continued, of providing information to inmates and external stakeholders about the status of conditions in the jail, the status of legal and social visiting, and the reasons for canceling visiting. This lack of information, coupled with rumors about the heating conditions inside the jail during the extremely cold weather, led to protests outside the institution, as well as unrest inside the jail. Moreover, because MDC Brooklyn houses a significant population of pretrial inmates, some of whom may require daily access to counsel to prepare for trial, it was critical for the jail to keep inmates, counsel, and the courts informed about any disruptions to legal visiting. BOP and MDC Brooklyn management failed to do so. We found that a contingency plan that better considered the information

needs of these stakeholders would have assisted the BOP in more effectively managing a crisis situation. We believe that the BOP must provide its institutions additional guidance on how and when they should inform defense counsel and the courts about prison administration decisions that may temporarily affect inmates' access to counsel.⁶³

We believe that the issuance of additional guidance from BOP leadership to institutions about how to handle external communications during emergencies could help alleviate stakeholder concerns and reduce the potential for confusion and disruptive events such as those that occurred following the power outage at MDC Brooklyn. According to the former acting BOP Director, this process has already started. The BOP is currently completing its own after-action report on the MDC Brooklyn fire and power outage. The former acting BOP Director said that he planned to use that document, in concert with the OIG report, to make necessary changes to BOP policy and practice.

⁶³ Order, *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons and Warden Herman Quay*.

We identified at least eight lawsuits filed by inmates alleging a series of harms caused by the power outage. As of August 23, 2019, all of these cases were active. See [Appendix 3](#) for the list of these lawsuits.

CONCLUSION AND RECOMMENDATIONS

Conclusion

We believe that temperature regulation was, and continues to be, the most serious problem affecting the conditions of confinement at MDC Brooklyn. We found that a significant cause of this problem is that MDC Brooklyn management and facilities staff do not have access to real-time temperature and equipment functionality data, via a Building Management System (BMS), which would allow them to make adjustments to the HVAC system as quickly as possible. Available temperature logs were insufficient for the Warden during the power outage or the OIG to assess how long certain inmate housing areas were below the BOP target temperature. Not only can insufficient temperature information cause inmates to experience temperatures well above or below the BOP target, but it also can give management and staff false confidence that temperatures in the building are acceptable.

Specifically, due to MDC Brooklyn facilities staff's imprecise measurement methods in effect during the power outage, we cannot determine how long temperatures in inmate cells were at 64 degrees (the lowest recorded temperature during the power outage) or whether they were higher or lower. Further, because BOP policy states that temperatures may acceptably deviate from the BOP target of 68 degrees, BOP staff may not appreciate how uncomfortable a 4 degree deviation from the target can be for inmates, especially those in short sleeves, confined to a cell, with a bed directly next to a cold exterior wall, for days on end.

Given other HVAC issues identified during our inspection, it is possible that, even with a BMS and upgraded equipment, the MDC Brooklyn HVAC system may not be able to achieve and maintain building temperatures at BOP targets throughout the year. Therefore, below we make a detailed recommendation that considers the possibility that the BOP may need to perform more extensive diagnoses and repairs of the MDC Brooklyn HVAC system if soon to be completed upgrades do not address temperature regulation issues.

Temperature regulation issues notwithstanding, we found that BOP and MDC Brooklyn management took steps to ensure safety and security of the facility during the power outage. However, we found certain significant flaws in the facility's management during the week of the power outage. Specifically, we believe that MDC Brooklyn management could have been better prepared to resume legal and social visiting if it had in place an alternative visiting plan available to use once it became clear that the power outage would not be resolved promptly. Additionally, MDC Brooklyn management was not aware of and did not ensure that inmates who use continuous positive airway pressure machines were able to do so during the power outage. We also believe that MDC Brooklyn management could have done more to communicate to inmates the circumstances surrounding the power outage and alternative methods for accessing vital services, such as communicating with counsel and requesting prescription refills, when telephones and inmate computer systems were not working.

Finally, we found that MDC Brooklyn and the BOP did not issue sufficient information about the status of legal visiting, alternative visiting arrangements, and the conditions of confinement to inmates, defense counsel, the courts, inmates' families, the public, and members of Congress. We believe this was due, in part, to the absence of BOP policy or contingency plans directing them how and when to communicate with internal and external stakeholders and because management failed to appreciate the need to provide stakeholders with information on the availability of legal visits, especially given the large number of pretrial inmates at MDC Brooklyn.

An MDC Brooklyn management official characterized the events at MDC Brooklyn from January 27 through February 3, 2019, as a "perfect storm." A fire caused a power outage at a densely populated jail experiencing unrelated heating problems during a week of extremely cold temperatures. Given these events, we acknowledge that, even if the BOP had more proactively released public information about the situation, it may not have fully diminished stakeholder concerns about what, on its face, and in the absence of information to the contrary, sounded like a very troubling situation. However, the BOP's initial silence about the fire and power outage was interpreted by defense counsel, the courts, the public, and ultimately members of Congress as apathy and indifference, as demonstrated by ensuing public confusion and protests, judicial actions, and congressional scrutiny.

Recommendations

To ensure that it is better able to minimize the effect that future facilities issues and disruptive events have on inmates at MDC Brooklyn, we recommend that the BOP:

1. Complete the heating, ventilation, and cooling equipment upgrade subproject at Metropolitan Detention Center Brooklyn and ensure that the equipment is capable of maintaining temperatures at BOP targets. Further, ensure that upgraded hardware and Building Management System software allow facilities staff to accurately monitor building temperatures and heating, ventilation, and cooling equipment performance.
2. Take further action to diagnose the sources of temperature regulation issues and remedy them, if the upgraded Metropolitan Detention Center Brooklyn heating, ventilation, and cooling system cannot maintain building temperatures at BOP targets.
3. Until the upgraded Metropolitan Detention Center Brooklyn heating, ventilation, and cooling system can maintain building temperatures at BOP targets, add thermal underwear, sweat suits, or other cold-weather clothing to the institution's list of standard-issue attire.

To ensure that it is better able to minimize the effect that future facilities issues and disruptive events have on inmates at all BOP institutions, we recommend that the BOP update policy and contingency plans to:

4. Ensure that, in the absence of Building Management System software, institutions use a consistent and sound method to measure and document temperatures and record all maintenance performed on heating, ventilation, and cooling equipment.
5. Require all institutions to develop alternative legal visiting plans that ensure that inmates can access legal counsel as soon as is safely possible after a facilities issue or other disruptive event.
6. Update visitation policies to describe alternative legal visiting arrangements, when legal visiting is restricted under 28 C.F.R. § 540.40, to ensure pretrial inmates may access legal counsel under 28 C.F.R. § 551.117.
7. Require institutions to maintain a list of inmates who use continuous positive airway pressure machines, or other electronic medical devices, in their cells so that institution staff can make every effort to accommodate those inmates in the event of a power outage.
8. When telephones and inmate computer systems are unavailable, communicate promptly to inmates the causes of and efforts to resolve problems that significantly affect institution operations, as well as alternative methods for accessing vital services.
9. Provide institutions additional guidance on how and when staff should inform defense counsel, the courts, inmates' families, and the public about disruptive events affecting the conditions of confinement and institution management decisions that restrict legal and social visiting.

PURPOSE, SCOPE, AND, METHODOLOGY

The OIG assessed the steps the BOP took to address issues caused by the fire and power outage during the week of January 27 to February 3, 2019, and how those issues effected the conditions of confinement for inmates. The OIG also assessed the adequacy of BOP contingency plans for such an incident.⁶⁴

Standards

The OIG conducted this review and inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspections and Evaluation* (January 2012).

Site Visits

We visited MDC Brooklyn on three different occasions: February 7–13, February 27–28, and March 20–27, 2019. During our site visits, we toured East and West Building housing units (regular and Special Housing Units (SHU)); mechanical rooms; powerhouses; social and legal visiting areas; inmate Receiving and Discharge areas; and the underground tunnel, or “link,” connecting the two buildings. In the West Building, we toured the central kitchen, commissary, education area, and medical offices. We also tested air and water temperatures in housing units and cells, interviewed staff and inmates, and reviewed surveillance video camera footage.

Interviews

We conducted more than 50 in-person and telephonic interviews with BOP Central Office staff, Northeast Regional staff, and MDC Brooklyn staff and inmates. In particular, we spoke with the following BOP management officials: the acting BOP Director; the Northeast Regional Director; the Chief of the BOP's Facilities Programs Section; the Northeast Regional Facilities Administrator; and three management staff members from the BOP's Information, Policy, and Public Affairs Division, including the acting Assistant Director. We also interviewed members of MDC Brooklyn's executive staff and department heads, including the Warden, Associate Warden for Custody, Associate Warden for Operations, Captain, Executive Assistant, Facilities Manager, Local Counsel, Health Services Administrator, and Chief Psychologist. We spoke with MDC Brooklyn Health Services, correctional, and facilities staff, including a doctor and a nurse, Unit Counselors, Correctional Officers, and an HVAC foreman. We also spoke with 11 inmates who were housed throughout the building during the week of the power outage.

⁶⁴ We did not assess the overall efficacy of medical care at MDC Brooklyn; however, we did review surveillance video footage to determine whether MDC Brooklyn staff delivered medication and insulin to housing units during the power outage. We also did not assess MDC Brooklyn's preparation for and response to protest activities and other civil disturbances that occurred in and around MDC Brooklyn during and after the power outage; however, we do make reference to the protests in our report.

We also interviewed external stakeholders, including a representative from the Federal Defenders of New York, a representative from the U.S. Attorney's Office for the Eastern District of New York, and the president of the local correctional employees union, all of whom toured the facility during the week of January 27.

Data Analysis

MDC Brooklyn Temperature Logs

We analyzed all available MDC Brooklyn temperature logs, which covered January 23 and January 30–March 19, 2019.⁶⁵ As described in the [Results of the Review](#), we cannot state, with reasonable assurance, how many West Building inmate housing areas experienced temperatures at or below the BOP target of 68 degrees Fahrenheit during the power outage, and for how long, because MDC Brooklyn facilities staff did not use a reliable methodology to measure or record temperatures.

OIG Temperature Observations

On February 12, 2019, at 8:05 p.m., we began measuring and recording air and water temperatures inside the MDC Brooklyn West Building.⁶⁶ During our inspection, we measured cell ambient air temperature, cell HVAC vent temperature, cell sink water temperature, cell window temperature, housing unit common area ambient air temperature, and inmate shower water temperature.⁶⁷ Interviewees and media reporting suggested that temperatures could be coldest in the “2-units,” which face the Upper New York Bay. Therefore, we judgmentally sampled temperatures in the 2-units on each of the five regular housing unit floors in the West Building. We also tested temperatures in one of the two West Building SHUs. Both SHU units face the Upper New York Bay.

To test ambient air temperature, we used a digital humidity and temperature meter. To measure water temperature, we used a stem thermometer. To measure cell vent and window temperatures, we used an infrared thermometer. During the OIG test, MDC Brooklyn staff also took temperature readings using their own equipment, which produced readings in ranges similar to OIG readings. During the day of our inspection, the average outside temperature was 31 degrees.⁶⁸

⁶⁵ MDC Brooklyn did not provide temperature logs for January 24–January 29 or February 18, 21, and 23.

⁶⁶ Before the OIG officially began testing temperatures in the West Building, the inspection team spent 2 days touring the facility (February 7 and 8) to develop a methodology to accurately test temperatures.

⁶⁷ Showers in the SHU are located inside the cells, and showers on all other floors are located in the housing units.

⁶⁸ National Weather Service, “Observed Weather,” February 12, 2019.

Video Observations

We reviewed video security camera footage taken during the power outage to observe inmates' receipt of meals, medication, and insulin and to observe inmates' clothing and behavior. In total, we made 648 surveillance video review observations from the week of the power outage.

To determine whether MDC Brooklyn provided inmates with three meals a day and delivered medication and insulin twice a day during the power outage, we reviewed video security camera footage for the entire week of January 27–February 3, 2019. We judgmentally sampled footage from 10 of the 16 regular housing units and 1 of 2 SHU units in the West Building. Overall, we made 538 observations of food, medication, and insulin deliveries, which allowed us to assess MDC Brooklyn's ability to provide these vital services during the power outage.

Other Data Sources

To assess inmates' complaints about facility conditions at MDC Brooklyn, we analyzed MDC Brooklyn inmate facilities complaints from October 2017 through February 2019. To assess MDC Brooklyn operations, we also analyzed staff daily assignment rosters from December 2018 through February 2019.

Document and Policy Review

We reviewed the following MDC Brooklyn records generated during the week of the power outage: the fire report from the January 27 electrical fire, medication and insulin distribution reports, inmate clinical encounter reports, inmate rosters and phone logs, inmate grievances, incident reports, food service menus, and court filings related to the power outage. We also reviewed MDC Brooklyn's legal and social visiting logs; BOP contingency plans and emergency procedures; and Facilities Department documentation, including boiler and generator logs, electrical system and HVAC inspection reports, work orders, repair records, additional funding requests, and maintenance contract documentation. Finally, our team reviewed BOP operational and programmatic reviews of various MDC Brooklyn programs and services and BOP policies for facilities and heating standards, inmate management, news media contacts, and legal and social visiting.

OTHER MDC BROOKLYN HVAC ISSUES

According to MDC Brooklyn repair records and written statements, we determined that between December 2017 and June 2019 heating and cooling coils in 21 of the West Building's 58 air handler units burst, requiring repair or replacement. Of the 21 air handlers that have required coil repair, 15 served inmate housing areas. When air handler coils burst, hot or cold water cannot flow through the coils and the air handler unit cannot efficiently warm or cool air (depending on the season). We also found that burst coils have caused flooding and overhead water damage at MDC Brooklyn. According to the MDC Brooklyn Facilities Manager, facilities staff can repair existing coils or replace coils entirely. He explained that temporary repairs can be made within 24 hours. During fiscal year 2018, MDC Brooklyn also purchased and installed 12 new coils, with the largest coils costing more than \$5,700.

In late May 2019, after our initial visits to MDC Brooklyn, two of the West Building's three chillers stopped working. According to MDC Brooklyn, the one operational chiller is able to maintain temperatures in the building in accordance with BOP policy. While awaiting repairs to the two nonoperational chillers, MDC Brooklyn installed a temporary chiller in case the remaining, operational chiller experienced a failure.

A Unit 6-2 air handler coil began leaking on June 3, 2019.⁶⁹ The coil needed to be replaced, which made air conditioning temporarily unavailable in parts of the unit. On June 5, staff installed a temporary coil, which restored air conditioning, and ordered a replacement for the coil that had failed. MDC Brooklyn's air handler coils are not "off the shelf" products and, as a result, must be manufactured. The replacement coil was delivered on July 17 and installed the next day, according to MDC Brooklyn management.

⁶⁹ Unit 6-2 also experienced a coil failure and temperatures as low as 59 degrees just before the power outage.

JUDICIAL ACTIONS RELEVANT TO THE MDC BROOKLYN FIRE AND POWER OUTAGE

Case	Court	Actions	Date
<i>United States v. Dino Sanchez</i>	EDNY	The attorney for the defendant described to the court his understanding of the power outage and conditions of confinement.	January 31, 2019
<i>United States v. Segura-Genao</i>	SDNY	The attorney for the defendant described to the court his understanding of the power outage and conditions of confinement.	February 1, 2019
<i>In Re the Matter of Conditions at the Metropolitan Detention Center, West Building, Brooklyn, New York</i>	EDNY	The court authorized a representative from the Federal Defenders of New York and the U.S. Attorney's Office for the Eastern District of New York to tour the West Building.	February 1, 2019
<i>Federal Defenders of New York, Inc. v. Federal Bureau of Prisons and Warden Herman Quay</i>	EDNY	The court issued a temporary restraining order requiring MDC Brooklyn to hold legal visiting.	February 4, 2019
<i>United States v. Segura-Genao</i>	SDNY	During an evidentiary hearing, Judge Analisa Torres toured the West Building.	February 5, 2019
<i>Ak v. Quay</i>	EDNY	During this ongoing civil lawsuit, the plaintiff inmate alleged a series of harms caused by the power outage.	Filed April 8, 2019
<i>Alicea v. Quay</i>	EDNY	During this ongoing civil lawsuit, the plaintiff inmate alleged a series of harms caused by the power outage.	Filed April 9, 2019
<i>Atkinson v. Quay</i>	EDNY	During this ongoing civil lawsuit, the plaintiff inmate alleged a series of harms caused by the power outage.	Filed March 19, 2019
<i>Hardy v. Quay</i>	EDNY	During this ongoing civil lawsuit, the plaintiff inmate alleged a series of harms caused by the power outage.	Filed April 12, 2019
<i>Haskins v. Quay</i>	EDNY	During this ongoing civil lawsuit, the plaintiff inmate alleged a series of harms caused by the power outage.	Filed April 25, 2019
<i>Richardson v. Quay</i>	EDNY	During this ongoing civil lawsuit, the plaintiff inmate alleged a series of harms caused by the power outage.	Filed March 20, 2019
<i>Saeed v. Quay</i>	EDNY	During this ongoing civil lawsuit, the plaintiff inmate alleged a series of harms caused by the power outage.	Filed April 8, 2019
<i>Scott et al. v. Quay</i>	EDNY	During this ongoing civil lawsuit, plaintiff inmates alleged a series of harms caused by the power outage.	Filed February 22, 2019

Note: EDNY=Eastern District of New York; SDNY=Southern District of New York.

Source: LexisNexis, "CourtLink," www.courtlink.lexisnexis.com (docket information current as of August 23, 2019)

**FIRST BOP PRESS RELEASE ADDRESSING THE MDC
BROOKLYN POWER OUTAGE**



U. S. Department of Justice
Federal Bureau of Prisons
Metropolitan Detention Center
Brooklyn, NY

For Immediate Release
February 2, 2019

Contact: Valery Logan
Public Information Officer
[REDACTED]

Partial Power Outage at the Metropolitan Detention Center Brooklyn, NY

Brooklyn, NY: Metropolitan Detention Center (MDC) Brooklyn experienced a partial power outage, due to a fire in the switch gear room. The West building has limited power in some areas; however, the East building was unaffected. All areas have lights that are on the emergency lighting circuit which is being fed by the utility company.

The new electrical panel was installed by an outside contractor today, and a work ticket has been submitted by the electrical contractor to schedule a work crew to restore power to the new temporary service switch. The facility is working to restore power as expeditiously as possible; the current estimate is that the work is expected to be completed by Monday, February 4, 2019.

Inmates have hot water for showers and hot water in the sinks in the cell. Essential personal hygiene items and medical services continue to be provided. New York City Emergency Services is providing blankets to MDC Brooklyn, and inmates will receive additional blankets and clothing today. The inmate telephones, inmate computers, and inmate televisions have no electrical power at this time, because of the electrical issue. The inmate's public defender phones are operational. Staff telephones in the unit officer stations are operational.

Tours of the facility were provided to representatives and staff from the United States Congress. All representatives were able to walk the facility, talk to inmates and staff and observe institution conditions.

Metropolitan Detention Center Brooklyn is an administrative security facility that currently houses 1,654 male and female offenders in Brooklyn, NY. Visiting has been temporarily suspended, due to the partial power outage. Visitors should continue to check the public website (www.bop.gov) for any updates regarding visiting.

Additional information about the Federal Bureau of Prisons can be found at www.bop.gov.

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SECOND BOP PRESS RELEASE ADDRESSING THE MDC BROOKLYN POWER OUTAGE



U. S. Department of Justice
Federal Bureau of Prisons
Metropolitan Detention Center
Brooklyn, NY

For Immediate Release
February 3, 2019

Contact: Valery Logan
Public Information Officer
[REDACTED]

***** Update *** Partial Power Outage at the Metropolitan Detention Center Brooklyn, NY**

Brooklyn, NY: On January 27, 2019, Metropolitan Detention Center (MDC) Brooklyn experienced a partial power outage due to a fire in the switch gear room. The West building has limited power in some areas; however, the East building was unaffected. All affected areas have lights that are on the emergency lighting circuit which is being fed by the utility company.

The new electrical panel was installed by an outside contractor on February 2nd and a work ticket has been submitted by the electrical contractor to schedule a work crew to restore power to the new temporary service switch once the remaining part is obtained. Work is expected to be completed by Monday, February 4, 2019.

Heating to the building is provided via a boiler, which was not affected by the power outage. Inmates have hot water for showers and hot water in the sinks in the cell. Essential personal hygiene items and medical services continue to be provided. The facility has accepted resources from the New York City Emergency Management and the New York Department of Corrections. The inmate telephones, inmate computers, and inmate televisions do not have electrical power at this time because of the electrical issue. The inmate's public defender phones are operational. Staff telephones in the unit officer stations are operational.

Medical staff have checked and continue to check each inmate cell-by-cell periodically and continue to dispense required medications and address the medical needs of the inmate population. Legal visits will be available today.

Tours of the facility were provided on February 1st and 2nd to representatives and staff from the United States Congress. All representatives were able to walk the facility, talk to inmates and staff and observe institution conditions.

We continue to work expeditiously to restore power to the facility as quickly as possible.

Additional information about the Federal Bureau of Prisons can be found at www.bop.gov.

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**DOJ PRESS RELEASE ADDRESSING THE MDC BROOKLYN
POWER OUTAGE**

The following statement is attributable to

Wyn Hornbuckle

Deputy Director of Public Affairs

U.S. Department of Justice

The electrical power at the Bureau of Prisons (BOP) facility at MDC Brooklyn was restored at approximately 6:30 p.m., Sunday evening. With the heat and hot water operational, and the restoration of electrical power, the facility can now begin to return to regular operations. In the coming days, the Department will work with the Bureau of Prisons to examine what happened and ensure the facility has the power, heat and backup systems in place to prevent the problem from reoccurring.

THE BOP'S RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, D.C. 20534

September 23, 2019

MEMORANDUM FOR NINA S. PELLETIER
ASSISTANT INSPECTOR GENERAL
EVALUATIONS AND INSPECTIONS

Thomas R. Kane

FROM: Thomas R. Kane
Deputy Director

SUBJECT: Response to the Office of Inspector General's (OIG) Draft Audit Report: Review and Inspection of Metropolitan Detention Center Brooklyn Facilities Issues and Related Impacts on Inmates

The Bureau of Prisons (BOP) appreciates the opportunity to provide a response to the Office of the Inspector General's above-referenced report. Therefore, please find the BOP's responses to the recommendations below:

OIG recommends the BOP Facility MDC Brooklyn:

Recommendation 1: Complete the heating, ventilation, and cooling equipment upgrade subproject at Metropolitan Detention Center Brooklyn and ensure that the equipment is capable of maintaining temperatures at BOP targets. Further, ensure that upgraded hardware and Building Management System software allow facilities staff to accurately monitor building temperatures and heating, ventilation, and cooling equipment performance.

Initial Response: The BOP agrees with this recommendation. The BOP will complete the heating, ventilation, and cooling equipment

upgrade subproject at Metropolitan Detention Center Brooklyn and ensure that the equipment is capable of maintaining temperatures at BOP targets. Further, the BOP will ensure that upgraded hardware and Building Management System software allow facilities staff to accurately monitor building temperatures and heating, ventilation, and cooling equipment performance.

Recommendation 2: Take further action to diagnose the sources of temperature regulation issues and remedy them, if the upgraded Metropolitan Detention Center Brooklyn heating, ventilation, and cooling system cannot maintain building temperatures at BOP targets.

Initial Response: The BOP agrees with this recommendation. The BOP will take further action to diagnose the sources of temperature regulation issues and remedy them, if the upgraded Metropolitan Detention Center Brooklyn heating, ventilation, and cooling system cannot maintain building temperatures at BOP targets.

Recommendation 3: Until the upgraded Metropolitan Detention Center Brooklyn heating, ventilation, and cooling system can maintain building temperatures at BOP targets, add thermal underwear, sweat suits, or other cold-weather clothing to the institution's list of standard-issue attire.

Initial Response: The BOP agrees with this recommendation. The BOP will add thermal underwear, sweat suits, or other cold-weather clothing to the institution's list of standard-issue attire until the upgraded Metropolitan Detention Center Brooklyn heating, ventilation, and cooling system can maintain building temperatures at BOP targets.

OIG recommends that the BOP update policy and contingency plans to:

Recommendation 4: Ensure that, in the absence of Building Management System software, institutions use a consistent and sound method to measure and document temperatures and record all maintenance performed on heating, ventilation, and cooling equipment.

Initial Response: The BOP agrees with this recommendation. The BOP will ensure that, in the absence of Building Management System software, institutions will use a consistent and sound method to measure and document temperatures and record all

maintenance performed on heating, ventilation, and cooling equipment.

Recommendation 5: Require all institutions to develop alternative legal visiting plans that ensure inmates can access legal counsel as soon as is safely possible after a facilities issue or other disruptive event.

Initial Response: The BOP agrees with this recommendation. The BOP will require all institutions to develop alternative legal visiting plans that ensure inmates can access legal counsel as soon as is safely possible after a facilities issue or other disruptive event.

Recommendation 6: Update visitation policies to describe alternative legal visiting arrangements, when legal visiting is restricted under 28 C.F.R. § 540.40, to ensure pretrial inmates may access legal counsel under 28 C.F.R. § 551.117.

Initial Response: The BOP agrees with this recommendation. The BOP will update visitation policies to describe alternative legal visiting arrangements, when legal visiting is restricted under 28 C.F.R. § 540.40, to ensure pretrial inmates may access legal counsel under 28 C.F.R. § 551.117.

Recommendation 7: Require institutions to maintain a list of inmates who use continuous positive airway pressure machines, or other electronic medical devices, in their cells so that institution staff can make every effort to accommodate those inmates in the event of a power outage.

Initial Response: The BOP agrees with this recommendation. The BOP will require institutions to maintain a list of inmates who use continuous positive airway pressure machines, or other electronic medical devices, in their cells so that institution staff can make every effort to accommodate those inmates in the event of a power outage.

Recommendation 8: When telephones and inmate computer systems are unavailable, communicate promptly to inmates the causes of and efforts to resolve problems that significantly affect institution operations, as well as alternative methods for accessing vital services.

Initial Response: The BOP agrees with this recommendation. When telephones and inmate computer systems are unavailable, the BOP will communicate promptly to inmates the causes of and efforts to resolve problems that significantly affect institution operations, as well as alternative methods for accessing vital services.

Recommendation 9: Provide institutions additional guidance on how and when staff should inform defense counsel, the courts, inmates' families, and the public about disruptive events affecting the conditions of confinement and institution management decisions that restrict legal and social visitation.

Initial Response: The BOP agrees with this recommendation. The BOP will provide institutions additional guidance on how and when staff should inform defense counsel, the courts, inmates' families, and the public about disruptive events affecting the conditions of confinement and institution management decisions that restrict legal and social visitation.

OIG ANALYSIS OF THE BOP'S RESPONSE

The OIG provided a draft of this report to the BOP for its comment. The BOP's response is included in [Appendix 7](#) of this report. The OIG's analysis of the BOP's response and the actions necessary to close the recommendations are discussed below.

Recommendation 1: Complete the heating, ventilation, and cooling equipment upgrade subproject at Metropolitan Detention Center Brooklyn and ensure that the equipment is capable of maintaining temperatures at BOP targets. Further, ensure that upgraded hardware and Building Management System software allow facilities staff to accurately monitor building temperatures and heating, ventilation, and cooling equipment performance.

Status: Resolved.

BOP Response: The BOP concurred with the recommendation and stated that it will complete the heating, ventilation, and cooling equipment upgrade subproject at Metropolitan Detention Center Brooklyn and ensure that the equipment is capable of maintaining temperatures at BOP targets. The BOP will also ensure that upgraded hardware and Building Management System software allow facilities staff to accurately monitor building temperatures and heating, ventilation, and cooling equipment performance.

OIG Analysis: The BOP's planned actions are responsive to our recommendation. On or before December 26, 2019, please provide documentation detailing the status of the upgrade subproject, as well as documentation, such as temperature and maintenance logs, that demonstrate that facilities staff are able to use the Building Management System software to accurately monitor building temperatures and heating, ventilation, and cooling equipment performance.

Recommendation 2: Take further action to diagnose the sources of temperature regulation issues and remedy them, if the upgraded Metropolitan Detention Center Brooklyn heating, ventilation, and cooling system cannot maintain building temperatures at BOP targets.

Status: Resolved.

BOP Response: The BOP concurred with the recommendation and stated that it will take further action to diagnose the sources of temperature regulation issues and remedy them, if the upgraded Metropolitan Detention Center Brooklyn heating, ventilation, and cooling system cannot maintain building temperatures at BOP targets.

OIG Analysis: The BOP's planned actions are responsive to our recommendation. If the BOP or the OIG determines (based on information provided in response to Recommendation 1) that the upgraded Metropolitan Detention Center Brooklyn heating, ventilation, and cooling system cannot maintain

building temperatures at BOP targets, please provide documentation, by December 26, 2019, detailing alternative repair actions taken or proposed plans to address temperature regulation issues.

Recommendation 3: Until the upgraded Metropolitan Detention Center Brooklyn heating, ventilation, and cooling system can maintain building temperatures at BOP targets, add thermal underwear, sweat suits, or other cold-weather clothing to the institution's list of standard-issue attire.

Status: Resolved.

BOP Response: The BOP concurred with the recommendation and stated that it will add thermal underwear, sweat suits, or other cold-weather clothing to the institution's list of standard-issue attire until the upgraded heating, ventilation, and cooling system can maintain building temperatures at BOP targets.

OIG Analysis: The BOP's planned actions are responsive to our recommendation. On or before December 26, 2019, please provide documentation indicating that thermal underwear, sweat suits, or other cold-weather clothing has been added to the institution's list of standard-issue attire and has been distributed to all inmates. The BOP should continue to issue this clothing until the institution's heating, ventilation, and cooling system is able to maintain building temperatures at BOP targets.

Recommendation 4: Ensure that, in the absence of Building Management System software, institutions use a consistent and sound method to measure and document temperatures and record all maintenance performed on heating, ventilation, and cooling equipment.

Status: Resolved.

BOP Response: The BOP concurred with the recommendation and stated that it will ensure that, in the absence of Building Management System software, institutions use a consistent and sound method to measure and document temperatures and record all maintenance performed on heating, ventilation, and cooling equipment.

OIG Analysis: The BOP's planned actions are responsive to our recommendation. On or before December 26, 2019, please provide documentation that indicates that all BOP institutions have received guidance about how, in the absence of Building Management System software, to use a consistent and sound method to measure and document temperatures and record all maintenance performed on heating, ventilation, and cooling equipment.

Recommendation 5: Require all institutions to develop alternative legal visiting plans that ensure that inmates can access legal counsel as soon as is safely possible after a facilities issue or other disruptive event.

Status: Resolved.

BOP Response: The BOP concurred with the recommendation and stated that it will require all institutions to develop alternative legal visiting plans that ensure that inmates can access legal counsel as soon as is safely possible after a facilities issue or other disruptive event.

OIG Analysis: The BOP's planned actions are responsive to our recommendation. On or before December 26, 2019, please provide documentation indicating that the BOP requires all institutions to develop alternative legal visiting plans. Further, provide a status update detailing the number of institutions that have developed such a plan.

Recommendation 6: Update visitation policies to describe alternative legal visiting arrangements, when legal visiting is restricted under 28 C.F.R. § 540.40, to ensure pretrial inmates may access legal counsel under 28 C.F.R. § 551.117.

Status: Resolved.

BOP Response: The BOP concurred with the recommendation and stated that it will update visitation policies to describe alternative legal visiting arrangements, when legal visiting is restricted under 28 C.F.R. § 540.40, to ensure that pretrial inmates may access legal counsel under 28 C.F.R. § 551.117.

OIG Analysis: The BOP's planned actions are responsive to our recommendation. On or before December 26, 2019, please provide documentation indicating that the BOP has updated visitation policies or provide a status update on your progress.

Recommendation 7: Require institutions to maintain a list of inmates who use continuous positive airway pressure machines, or other electronic medical devices, in their cells so that institution staff can make every effort to accommodate those inmates in the event of a power outage.

Status: Resolved.

BOP Response: The BOP concurred with the recommendation and stated that it will require institutions to maintain a list of inmates who use continuous positive airway pressure machines, or other electronic medical devices, in their cells.

OIG Analysis: The BOP's planned actions are responsive to our recommendation. On or before December 26, 2019, please provide documentation indicating that the BOP requires all institutions to maintain a list of inmates who use continuous positive airway pressure machines, or other electronic medical devices, in their cells. Further, provide a status update detailing the number of institutions that have developed this list.

Recommendation 8: When telephones and inmate computer systems are unavailable, communicate promptly to inmates the causes of and efforts to resolve problems that significantly affect institution operations, as well as alternative methods for accessing vital services.

Status: Resolved.

BOP Response: The BOP concurred with the recommendation and stated that, when telephones and inmate computer systems are unavailable, it will communicate promptly to inmates the causes of and efforts to resolve problems that significantly affect institution operations, as well as alternative methods for accessing vital services.

OIG Analysis: The BOP's planned actions are responsive to our recommendation. On or before December 26, 2019, please provide documentation indicating that the BOP has developed and issued the relevant guidance to all BOP institutions.

Recommendation 9: Provide institutions additional guidance on how and when staff should inform defense counsel, the courts, inmates' families, and the public about disruptive events affecting the conditions of confinement and institution management decisions that restrict legal and social visiting.

Status: Resolved.

BOP Response: The BOP concurred with the recommendation and stated that it will provide institutions additional guidance on how and when staff should inform defense counsel, the courts, inmates' families, and the public about disruptive events affecting the conditions of confinement and institution management decisions that restrict legal and social visiting.

OIG Analysis: The BOP's planned actions are responsive to our recommendation. On or before December 26, 2019, please provide documentation indicating that the BOP has developed and issued the relevant guidance to all BOP institutions.



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