

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI**

JAMES CODY, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. ) Cause No. 4:17-cv-2707  
 )  
 CITY OF SAINT LOUIS, MISSOURI, )  
 )  
 Defendant. )

**PLAINTIFFS’ MOTION TO COMPEL EMERGENCY INSPECTION**

Come now Plaintiffs, by and through undersigned counsel, and request this Court to compel Defendant City of St. Louis (the “City”) to permit Plaintiffs’ counsel to conduct an emergency inspection of the City’s Medium Security Institution (“MSI”) on the afternoon of February 12, 2021 due to dangerous and deteriorating conditions at the facility, which have come to Plaintiffs’ counsel’s attention over the past week.

On February 11, 2021, at 12:17 p.m., Plaintiffs’ counsel emailed Defendant’s counsel a Notice of Inspection pursuant to Federal Rules of Civil Procedure 29 and 34(a)(2) that the City permit Plaintiffs’ counsel to inspect the MSI on Friday, February 12, 2021 due to serious concerns regarding recent reports of conditions at the facility. The City declined to stipulate to such an inspection.<sup>1</sup> Per Local Rule 3.04(a), Counsel for Plaintiffs (Nathaniel Carroll) and Defendant (Andrew Wheaton) conferred by phone afterwards, at approximately 4:39pm on February 11, 2021. During this call, Plaintiffs’ counsel again requested that the City permit Plaintiffs’ lawyers to inspect the Workhouse February 12, 2021. The City’s attorney reiterated

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<sup>1</sup> Ex. 1, Email from A. Wheaton to N. Carroll dated February 11, 2021, 4:01 p.m.

the objections stated in his previous email.<sup>2</sup> After conferring in good faith for 7 minutes, the parties were unable to reach an agreement.

Given the urgent nature of the situation, described in detail below, Plaintiffs move the Court to compel Defendant to permit Plaintiffs' counsel to inspect MSI on Friday, February 12, 2021.

In support thereof, Plaintiffs state as follows:

**CURRENT CONDITIONS - Frigid Temperatures and Retaliation**

1. On Wednesday, February 10, 2021, Matthew Mahaffey, the District Defender of the St. Louis City Trial Office of the Missouri State Public Defender, visited clients at MSI.<sup>3</sup> While there, Mr. Mahaffey spoke with two individuals currently detained at the facility--John Roe and John Doe.<sup>4</sup> Both detailed the cold conditions and retaliatory treatment they had experienced.

**John Roe**

2. The first young man with whom Mr. Mahaffey spoke, John Roe, has been detained at MSI for approximately a month and a half.<sup>5</sup>

3. The temperature in Mr. Roe's cell, to which he and other MSI detainees are confined 23 hours a day, is frigid, and detainees are only provided a single blanket, which is insufficient to keep them warm.<sup>6</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> Ex. 2, Declaration of Matthew Mahaffey ¶ 3. These individuals are identified by the pseudonyms John Roe and John Doe in order to protect them from retaliation at the hands of MSI staff. While they share the same pseudonym as two Plaintiffs in the Compliant (ECF No. 1), they are different individuals.

<sup>4</sup> *Id.* ¶ 4.

<sup>5</sup> *Id.* ¶ 5.

<sup>6</sup> *Id.*

4. On Monday, February 8, 2021, Mr. Roe opened the chuckhole of his jail cell<sup>7</sup> in order to let warm air into his cold cell; as he did this, Mr. Roe's arm was hanging out of the chuckhole for a time.<sup>8</sup>

5. During this incident, an MSI corrections officer told Mr. Roe to put his arm back into his cold cell; when Mr. Roe did not, the officer grabbed and wrenched his arm, shoving it back into the cell and scraping it against the rusty chuckhole opening in the process.<sup>9</sup>

6. The corrections officer then sprayed pepper spray into Mr. Roe's cell, twice, hitting Mr. Roe directly in the face and arm with the spray.<sup>10</sup> Afterwards, Mr. Roe was left alone in his cell for approximately the next 24 hours without any medical treatment. He was finally allowed to shower, 24 hours after he was sprayed.<sup>11</sup>

#### John Doe

7. The second individual to whom Mr. Mahaffey spoke during his February 10, 2021 visit to MSI, John Doe, is also currently confined to a frigid cell for over 23 hours per day.<sup>12</sup>

8. Mr. Doe's cell is, in his own words, "cold as hell," and most detainees only have one sheet, despite repeatedly asking for more bedding.<sup>13</sup>

9. Mr. Doe has also attempted to open his cell's chuckhole to allow warm air in, but MSI employees threaten to mace him when he does so.<sup>14</sup>

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<sup>7</sup> The slot through which food passes.

<sup>8</sup> Ex. 2, ¶ 6

<sup>9</sup> *Id.* ¶ 7

<sup>10</sup> *Id.* ¶ 8.

<sup>11</sup> *Id.* ¶ 9

<sup>12</sup> *Id.* ¶¶ 10-12.

<sup>13</sup> *Id.* ¶ 5, 12.

<sup>14</sup> *Id.* ¶ 12.

10. Over the past few weeks, when Mr. Doe has attempted to use the phone, an MSI employee has attempted to assault him.<sup>15</sup> This was the same officer who had threatened to mace Mr. Doe when he attempted to open his chuck-hole.<sup>16</sup>

11. According to Mr. Doe, he and over fifty other detainees were moved from the City Justice Center (“CJC”) to MSI in early January 2021, after their CJC wing was designated as the COVID ward within the jail.<sup>17</sup> Mr. Doe said that displaced detainees were moved to a wing in MSI that had been unoccupied for the previous year, and that the men slept on bare mattresses with no blanket or sheets.<sup>18</sup>

12. Following his visit with Mr. Doe on Wednesday night, Mr. Mahaffey received a phone call from Mr. Doe’s mother, who stated that Mr. Doe was being punished for visiting with Mr. Mahaffey by having his recreation and shower privileges revoked.<sup>19</sup>

### **COVID ISSUES**

13. Both Mssrs Roe and Doe have been diagnosed as COVID-19 positive within the past few months, during their incarceration in Defendant’s jails.<sup>20</sup>

14. Mr. Doe told Mr. Mahaffey that, while incarcerated at CJC, four men in his wing initially tested positive for COVID-19; that this number soon rose to eleven detainees; and that, not long afterwards, nearly every person in his pod had tested positive for COVID-19.<sup>21</sup>

15. Mr. Doe told Mr. Mahaffey that City officials informed him that they tested positive for COVID-19 but that he had not seen any documentation regarding his positive results, nor any documentation suggesting he has subsequently tested negative.<sup>22</sup>

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<sup>15</sup> *Id.* ¶ 13.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* ¶¶ 16-17.

<sup>18</sup> *Id.* ¶ 17.

<sup>19</sup> *Id.* ¶ 19.

<sup>20</sup> *Id.* ¶ 18.

<sup>21</sup> *Id.* ¶ 14.

<sup>22</sup> *Id.* ¶ 18.

16. After some detainees in a CJC pod full of COVID-positive cases staged a peaceful protest in January 2021, more than fifty detainees, including Mr. Doe and Mr. Roe, were suddenly moved to MSI.<sup>23</sup>

17. Over the past several weeks, Plaintiffs' counsel has received phone calls from family members of individuals incarcerated at MSI--as well as a few incarcerated individuals themselves--all of which uniformly describe the jail as a dirty, freezing cold facility, haphazardly repurposed by the City as a dumping ground for COVID-19 positive detainees.<sup>24</sup> Many of these same individuals have further related that officers retaliate against detainees with impunity.

18. A sworn statement by the mother of John Doe further demonstrates the precariousness of detainees' situations. The mother writes that her son has repeatedly told her of the retaliation he has faced from the MSI corrections officers, and that she receives contradictory information (or no information at all) from City employees.<sup>25</sup> She declared, "I am very afraid that something bad is going to happen to my son."<sup>26</sup>

19. Plaintiffs' counsel are increasingly concerned about these issues and believe that an inspection of the facility, as well as discussions with any potential detainees who may be housed there, is of the utmost importance to the safety of all people currently being housed at MSI.

As this Court is aware, over the three years this contentious litigation has been pending, Plaintiffs' counsel has never before made a request on such an immediate basis. Plaintiffs'

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<sup>23</sup> *Id.* ¶¶ 16-17.

<sup>24</sup> *Cf.* KMOV, Justice Center Disturbance, February 6, 2021 10:18 a.m. CST, at 7:58-8:12, [https://www.facebook.com/watch/live/?v=741444113167672&ref=watch\\_permalink](https://www.facebook.com/watch/live/?v=741444113167672&ref=watch_permalink) (Director of Public Safety Jimmie Edwards discussing no COVID cases at CJC while omitting whether any cases exist at MSI).

<sup>25</sup> *See* Ex. 3, Dec. of Victoria Echols, ¶¶ 4-5.

<sup>26</sup> *Id.* ¶ 15.

counsel moves this Court now for such relief only due to their immediate concerns about the safety of those currently jailed at MSI.

Wherefore, Plaintiffs request this honorable Court:

a. Order Defendant City to allow counsel for Plaintiffs to visit and inspect MSI on Friday, February 12 and meet with detainees to discuss their circumstances.

b. Order Defendant City to allow for the inspections of any records at MSI showing the temperature of the jail facilities from November 1, 2020 to present.

Dated: February 11, 2020

**ARCHCITY DEFENDERS, INC.**

By: /s/ John M. Waldron

Blake A. Strode (MBE #68422MO)  
John M. Waldron (MBE #70401MO)  
Corrigan Lewis, (MBE #68001 MO)  
Matthew Dollan, (MBE #71867 MO)  
Nathaniel R. Carroll, (MBE #67988 MO)  
Maureen G. V. Hanlon (MBE #70990MO)  
440 N. 4<sup>th</sup> Street, Suite 390  
Saint Louis, MO 63102  
855-724-2489 ext. 1012  
314-925-1307 (fax)  
[bstrode@archcitydefenders.org](mailto:bstrode@archcitydefenders.org)  
[jwaldron@archcitydefenders.org](mailto:jwaldron@archcitydefenders.org)  
[clewis@archcitydefenders.org](mailto:clewis@archcitydefenders.org)  
[mdollan@archcitydefenders.org](mailto:mdollan@archcitydefenders.org)  
[ncarroll@archcitydefenders.org](mailto:ncarroll@archcitydefenders.org)  
[mhanlon@archcitydefenders.org](mailto:mhanlon@archcitydefenders.org)

and

**DLA PIPER LLP (US)**

By: /s/ Gail Rodgers

Gail Rodgers (*Pro hac vice*)  
1251 Avenue of the Americas  
New York, NY 10020  
Phone: 212-335-4500  
Fax: 212-335-4501

[gail.rodgers@dlapiper.com](mailto:gail.rodgers@dlapiper.com)

Saher Valiani (MO Bar No. 69402)

33 Arch Street, 26<sup>th</sup> Floor

Boston, MA 02215

Phone: 617-406-6000

Fax: 617-406-6100

[saher.valiani@dlapiper.com](mailto:saher.valiani@dlapiper.com)

*Attorneys for Plaintiffs*