

**IN RE: EMERGENCY PETITION OF
THE FEDERAL PUBLIC DEFENDER
WITH RESPECT TO PRISONER
AVAILABILITY**

An emergency petition was filed by the Federal Public Defender seeking court relief because of prisoner unavailability in the Southern District of Florida due to Hurricane Andrew. The petition was assigned to the Chief Judge.

A hearing was held with arguments by the U.S. Attorney, the Federal Public Defender and a representative of the Florida Association of Criminal Defense Lawyers. Also present were representatives from the Bureau of Prisons and the U.S. Marshals Service.

All parties recognized the crisis created by Hurricane Andrew's rendering Metropolitan Correctional Center Miami/Homestead unusable until it is repaired, the anticipated date being March 1, 1993. This court has the heaviest criminal felony case load of any district in America and this court has relied on having 1200 plus prisoners at MCC Miami/Homestead, who are in custody awaiting trial or sentencing or are prisoners brought in to serve as witnesses in these or other proceedings. The loss of the prison facilities and the emergency transfer of all of the 1200 plus residents to institutions as far away as Talladega, Alabama; Atlanta and Jesup, Georgia; Jacksonville, etc. the day after Hurricane Andrew struck has created the necessity of coming up with a workable plan for prisoner availability to avoid chaos in criminal cases in the Southern District of Florida.

Following the hearing, the United States Attorney expressed a desire and willingness to try and work out some of the problems with the Federal Public Defender and defense attorneys. Magistrate Judge Snow also supervised the discussion of the various interested parties, which included all those parties indicated at the beginning of this order. Based on the agreements arrived at and other matters presented to the judges at various judges' meetings, the following provisions are in effect until further order of this court:

1. In order to accomplish initial appearance hearings, bond hearings and provide defense counsel with an opportunity for an early meeting(s) with defendants, newly arrested defendants will be retained in the district for fourteen (14) days before being transported, if in custody, to other locations.

2. The United States Marshal shall transport all defendants and witnesses into facilities within the Southern District of Florida two weeks prior to trial and one week prior to sentencing. In any case where the U.S. Marshal anticipates an inability to

comply with this requirement, he shall immediately report this to the district judge assigned to the case.

3. The United States Marshal shall not be required to comply timely with any request to produce a defendant or witness if that request is not made at least thirty days in advance of the date on which the defendant or witness is required for trial, sentencing or other proceeding. The thirty-day notice requirement applies not only to the district judges and magistrate judges in the Northern and Southern Divisions of the Court, but also to prosecutors and defense counsel seeking production of witnesses.

4. The district judges shall not order production of defendants for consultation with counsel sooner than two weeks prior to trial or one week prior to sentencing except upon written motion, and after hearing (which may be ex parte and may be referred to a United States Magistrate Judge for report and recommendation). Such orders to produce must be accompanied by written findings (which may be made by a magistrate judge, subject to adoption by the district judge) that the goals of counsel cannot be accomplished two weeks prior to trial or one week prior to sentencing, and setting forth the length of time needed to accomplish the purpose desired by counsel. It is anticipated issuance of such orders will be rare.

5. The specific relief requested by defendants that they be given reasonable opportunity to have "private face-to-face consultation with counsel" upon their being returned to the district is not a present problem to the court's understanding; if a problem situation develops after defendants have been returned, petitioner may present evidence of such to the court.

6. In an effort to monitor the situation and to review problems that arise, Magistrate Judge Snow or Garber is to meet weekly with representatives of the U.S. Marshals Service or Bureau of Prisons.

This order contemplates completion of repairs of MCC Miami/Homestead by March 1, 1993.

DONE AND ORDERED in Chambers at the United States Courthouse in Fort Lauderdale, this 6th day of October, 1992.


NORMAN C. ROETTGER
CHIEF UNITED STATES DISTRICT JUDGE

c: All Southern District Judges and Magistrate Judges
T.G. Cheleotis, Clerk of Court
Keenan G. Casady, District Court Executive
Federal Public Defender
U.S. Attorney
Library