

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BROOME

JUSTICE AND UNITY FOR THE SOUTHERN TIER

Plaintiff,

AFFIDAVIT

vs.

**Index No.
EFCA2022000924**

DAVID HARDER, Broome County Sheriff

Defendant.

ROBERT G. BEHNKE, being duly sworn, deposes and says:

1. That I am the County Attorney for the County of Broome, am familiar with the facts and circumstances of this action, and make this Affidavit in support of the Defendant's motion to modify the Court's previous order, if necessary.

2. On September 28, 2022, the New York Commission of Corrections approved a revised visitation schedule for the Broome County Correctional Facility. Mr. Cotter was notified of the revised schedule on that day.

3. As I advised Mr. Cotter, the inmate handbook was modified to comply with the revised visitation schedule.

4. Later on September 28, 2022 I advised Mr. Cotter if requests for visits exceeded the number of spots, additional time would be added. When visitation commenced on September 29, 2022, additional time was added as confirmed by Plaintiff in Paragraph 6 of his affidavit.

5. On September 30, 2022, I called Mr. Cotter to discuss our emails. I advised him that no one had been turned away from visitation on the 29th.

BROOME COUNTY ATTORNEYS OFFICE • BROOME COUNTY OFFICE BUILDING
GOVERNMENT PLAZA • BINGHAMTON, N.Y. 13901

BROOME COUNTY ATTORNEYS OFFICE • BROOME COUNTY OFFICE BUILDING
GOVERNMENT PLAZA • BINGHAMTON, N.Y. 13901

6. I again discussed with Mr. Cotter the Commission's approval of the visitation schedule, and he indicated that he would talk to his client, but that they would not likely be interested in any further conversations. I advised Mr. Cotter we would move to modify the Court's order and Mr. Cotter said to me then it will get resolved through the motions.

7. The Plaintiffs now complain that the Sheriff has no restrictions for visitation after spending months complaining that the Sheriff should not restrict visitation.

8. The Court in its order allowed the Sheriff to put in place any reasonable safety protocols that are recommended or required by the CDC, Department of Corrections and Community Supervision, or other pertinent Federal, State or local agencies, and that the protocols are to be the least restrictive means given the circumstances.

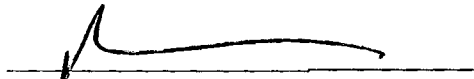
9. Although the CDC permits requiring visitors to wear masks, the State has rescinded its mask mandate. Therefore, the least restrictive means for visitation is to comply with the State requirement. The CDC says you can consider requiring visitors to provide proof of a negative SARS-CoV-2 test result within seventy-two hours of entry. When tests were brought up in the original motion, the Plaintiffs objected to this requirement because of the cost. Given the tenor of this litigation, requiring the visitors to provide a negative test would have elicited the same response as on the previous motion and likely the same motion the Plaintiffs have filed. The only other recommendation of the CDC is protective barriers. As explained by Mark Smolinsky, protective barriers are provided in the visitation room. A copy of the NYS DOH directive and current CDC guidelines are attached hereto as Exhibits A and B.

10. There are no other CDC recommendations, so it is likely that if social distancing or temperature checks were imposed, the Plaintiffs would be objecting to these requirements as


violating the Court's order. The CDC says that social distancing should be "encouraged" and is not mandated.

11. Upon information and belief, the Defendant has been complying with the Court's order by providing in-person visitation to all inmates in compliance with the minimum standards set by the New York State Commission of Corrections. To the extent it is necessary, we would request the Court modify its previous order to clarify that in-person visitation that complies with the minimum standards of the Commission of Corrections is permitted.

WHEREFORE, your Deponent respectfully requests that an Order be entered, to the extent necessary, granting the Defendant's motion with costs and disbursements, together with such other and further relief as to the Court may seem just and proper.


ROBERT G. BEHNKE

Sworn to before me this
10th Day of October 2022


Notary Public

WENDY S. WALTER
Notary Public, State of New York
No. 01WA4952378
Qualified in Broome County
My Commission Expires June 19, 2023

BROOME COUNTY ATTORNEYS OFFICE • BROOME COUNTY OFFICE BUILDING
GOVERNMENT PLAZA • BINGHAMTON, N.Y. 13901