UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA	:	Dkt. Nos. 21-58, 21-770
Appellee,	:	**AFFIRMATION IN OPPOSITION**
- v. -	:	**TO DEFENDANT'S APPEAL**
	:	**OF ORDERS DENYING**
GHISLAINE MAXWELL,		**PRE-TRIAL RELEASE**
	:	
Defendant-Appellant.		
	:	

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

LARA POMERANTZ, pursuant to Title 28, United States Code, Section 1746, hereby declares under penalty of perjury:

1. I am an Assistant United States Attorney in the Office of Audrey Strauss, United States Attorney for the Southern District of New York, and I represent the United States of America in this matter. I submit this affirmation in opposition to defendant-appellant Ghislaine Maxwell's appeal from the District Court's orders denying pre-trial release.

PRELIMINARY STATEMENT

2. Maxwell appeals from orders denying her pre-trial release that were entered on December 28, 2020 and March 22, 2021, in the United States

District Court for the Southern District of New York, by the Honorable Alison J. Nathan, United States District Judge.

3. Indictment 20 Cr. 330 (AJN) was filed on June 29, 2020, charging Maxwell in six counts. On July 2, 2020, Maxwell was arrested. On July 8, 2020, Indictment S1 20 Cr. 330 (AJN) (the "Indictment") was filed containing the same charges with ministerial corrections. (Dkt. 17 ("Ind.")).[1] Count One charges Maxwell with conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charges Maxwell with enticing a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2. Count Three charges Maxwell with conspiracy to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371. Count Four charges Maxwell with transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. §§ 2423 and 2. Counts Five and Six charge Maxwell with perjury, in violation of 18 U.S.C. § 1623.

4. On July 14, 2020, Judge Nathan held a lengthy bail hearing, at the conclusion of which she denied Maxwell bail. (Ex. D). Maxwell twice renewed

[1] "Br." refers to Maxwell's brief on appeal; "Ex." refers to the exhibits to Maxwell's brief; "Gov't Ex." refers to the exhibit to this affidavit; and "Dkt." refers to an entry on the District Court's docket for this case. Unless otherwise noted, case text quotations omit all internal quotation marks and alterations.

her bail application (Ex. E, I), which motions Judge Nathan denied in written orders dated December 28, 2020 and March 22, 2021 (Ex. H, L). Maxwell filed notices of appeal from these two orders (though not the original detention order).

5. Maxwell's trial is scheduled to begin on July 12, 2021.

STATEMENT OF FACTS

A. The Offense Conduct and Evidence

6. The Indictment charges Maxwell with facilitating the sexual abuse of multiple minor victims by Jeffrey Epstein between approximately 1994 and 1997.[2] (Ind. ¶ 1). During that period, Maxwell played a key role in Epstein's sexual abuse of minor girls by helping to identify, entice, and groom minor victims to engage in sex acts with Epstein. (Ind. ¶ 1). Maxwell befriended victims by asking them about their lives, taking them to the movies or on shopping trips, and encouraging them to interact with Epstein. (Ind. ¶ 4(a)). Maxwell groomed victims for sexual abuse for by, among other things, discussing sexual topics, undressing in

[2] After Judge Nathan's bail decisions were issued, Superseding Indictment S2 20 Cr. 330 (AJN) (the "Superseding Indictment") was filed, charging Maxwell in eight counts. In addition to the original six charges, the Superseding Indictment also charges Maxwell with sex trafficking conspiracy, in violation of 18 U.S.C. § 371, and sex trafficking of a minor, in violation of 18 U.S.C. § 1591. Among other things, the Superseding Indictment expanded the scope of the conspiracies charged in Counts One and Three from 1994 through 2004 and specifically identified a fourth victim of those conspiracies. The additional charges strengthen the evidence against Maxwell and further support Judge Nathan's detention orders.

front of a victim, being present when a minor victim was undressed, and/or being present for sex acts involving a minor victim and Epstein. (Ind. ¶ 4(b)). Maxwell's presence as an adult woman normalized Epstein's abusive behavior, and she took part in at least some acts of sexual abuse. (Ind. ¶¶ 4(c), (e)). To make victims feel indebted to Epstein, Maxwell encouraged victims to accept Epstein's offers of financial assistance. (Ind. ¶ 4(d)). The victims were as young as 14 years old when they were groomed and abused by Maxwell and Epstein, both of whom knew that their victims were minors. (Ind. ¶ 1).

7. Together, Maxwell and Epstein conspired to entice and cause minor victims to travel to Epstein's residences in different states, which Maxwell knew and intended would result in their grooming for and subjection to sexual abuse. (Ind. ¶ 2). To conceal her crimes, Maxwell lied under oath during a civil deposition, including when asked about her interactions with minor girls. (Ind. ¶ 2).

8. The Indictment contains detailed speaking allegations which describe: the means and methods of Maxwell's criminal conduct (Ind. ¶ 4); Maxwell's interactions with three minor victims (Ind. ¶¶ 7(a)-(c)); specific overt acts performed by Maxwell (Ind. ¶¶ 11(a)-(d)); and specific false statements that form the basis of the perjury charges (Ind. ¶¶ 21, 23).

9. As the Government explained in oral and written proffers, the

allegations in the Indictment are supported by the detailed, credible testimony of three different victim-witnesses. (*See, e.g.*, Ex. A at 5; Ex. F at 9-10). Each victim-witness's testimony is not only corroborated by that of the other victim-witnesses, but also by the testimony of other witnesses and documentary evidence, including flight records, diary entries, and other evidence. (Ex. A at 5; Ex. F at 10-12).[3]

B. The Initial Bail Hearing

10. Before Maxwell's bail hearing, the parties filed extensive written submissions. (Ex. A, B, C). On July 14, 2020, Judge Nathan heard lengthy oral argument from the parties and received statements from two victims. One victim, Annie Farmer, addressed the Court, stating that Maxwell "groomed me and abused me and countless other children and young women." (Ex. D at 40-41). An anonymous victim submitted a written statement describing Maxwell's abuse. (*Id.* at 38-40).

11. Judge Nathan ultimately ordered Maxwell detained on the basis of risk of flight and explained her reasoning in a detailed oral ruling. (*Id.* at 79-91). First, Judge Nathan found that "the nature and circumstances of the offense here weigh in favor of detention," given the statutory presumption of detention triggered

[3] Exhibit F was filed in redacted form in the District Court. The Government has moved to file an unredacted version under seal in this Court.

by charges involving minor victims and the potential penalties those charges carry. (*Id.* at 82). Second, Judge Nathan determined that "[t]he government's evidence at this early juncture of the case appears strong" based on the "multiple victims who provided detailed accounts of Ms. Maxwell's involvement in serious crimes," as well as corroboration in the form of "significant contemporaneous documentary evidence." (*Id.*). Third, Judge Nathan found that Maxwell's history and characteristics demonstrate that she poses a risk of flight. (*Id.* at 83).

12. In addressing that third factor, Judge Nathan emphasized Maxwell's "substantial international ties," which "could facilitate living abroad," including "multiple foreign citizenships," "familial and personal connections abroad," and "at least one foreign property of significant value." (*Id.*). Judge Nathan noted that Maxwell "is a citizen of France, a nation that does not appear to extradite its citizens." (*Id.*). She found that Maxwell "possesses extraordinary financial resources" and "the representations made to Pretrial Services regarding the defendant's finances likely do not provide a complete and candid picture of the resources available." (*Id.* at 83-84).

13. Judge Nathan noted Maxwell "does have some family and personal connections to the United States," but highlighted "the absence of any dependents, significant family ties or employment in the United States." (*Id.* at 84).

Although the defense argued that Maxwell did not leave the United States after Epstein's arrest and was in contact with the Government through counsel, Judge Nathan emphasized that Maxwell "did not provide the government with her whereabouts," and, in any event, "the reality that Ms. Maxwell may face such serious charges herself may not have set in until after she was actually indicted." (*Id.* at 84-85).

14. Accordingly, Judge Nathan found that the Government had carried its burden of demonstrating that Maxwell "poses a substantial actual risk of flight" and that "even the most restrictive conditions of release would be insufficient" to ensure Maxwell's appearance. (*Id.* at 86). Though the proposed bail package represented only a fraction of Maxwell's assets, Judge Nathan found that "even a substantially larger package would be insufficient." (*Id.*). She noted that although Maxwell "apparently failed to submit a full accounting or even a close to full accounting of her financial situation," "[e]ven if the picture of her financial resources were not opaque, as it is, detention would still be appropriate." (*Id.* at 86-87). That conclusion was informed by Maxwell's "significant financial resources" and "demonstrated sophistication in hiding those resources and herself." (*Id.* at 87). Judge Nathan emphasized that Maxwell's "recent conduct underscores her extraordinary capacity to evade detection, even in the face of what the defense has

acknowledged to be extreme and unusual efforts to locate her." (*Id.*).[4] Judge Nathan concluded that electronic monitoring and private security guards "would be insufficient" because Maxwell could remove the monitor and evade private guards. (*Id.* at 87-88). She also rejected Maxwell's comparison to certain other high-profile defendants, citing "crucial factual differences" in those cases. (*Id.* at 88).

15. Finally, Judge Nathan rejected Maxell's arguments about the risks of COVID-19 and the difficulty of preparing a defense with an incarcerated client, noting that Maxwell had many months to prepare for trial and has no underlying conditions that place her at heightened risk of complications from COVID-19.[5] (*Id.* at 89-90). Judge Nathan found that measures in place were sufficient to ensure Maxwell's access to her counsel, but also directed the Government to work with the defense "to provide adequate communication between counsel and client" and stated that the defense may make specific applications to the District Court for further relief if the process was "inadequate in any way." (*Id.* at 90-91).

---

[4] For example, Maxwell did not leave her home but had security guards make purchases for her using a credit card in the name of an LLC. Before her arrest, Maxwell ignored FBI agents' directions to open the door and tried to flee to another room in the house. A cell phone was found wrapped in tin foil on top of a desk. *See, e.g.*, Dkt. 22 at 7-8 (full version of Ex. C), Ex. D at 32-34.

[5] Maxwell now has been fully vaccinated. (Gov't Ex. A at 19, 21).

C. The Second Bail Application

16. On December 8, 2020, Maxwell renewed her request for bail, presenting a revised bail package with additional financial restrictions. (Ex. E). After considering multiple written submissions (Ex. E, F, G), Judge Nathan denied Maxwell's application in a written opinion (Ex. H).

17. Judge Nathan found that the arguments presented "either were made at the initial bail hearing or could have been made then" and the new information "only solidifies the Court's view that [Maxwell] plainly poses a risk of flight and that no combination of conditions can ensure her appearance." (Ex. H at 1-2). Judge Nathan explained:

> the charges, which carry a presumption of detention, are serious and carry lengthy terms of imprisonment if convicted; the evidence proffered by the Government, including multiple corroborating and corroborated witnesses, is strong; the Defendant has substantial resources and foreign ties (including citizenship in a country that does not extradite its citizens); and the Defendant, who lived in hiding and apart from the family to whom she now asserts important ties, has not been fully candid about her financial situation.

(*Id.* at 2).

18. Judge Nathan rejected Maxwell's claim that the Government overstated the strength of its case at the bail hearing, finding that Maxwell "too easily discredits the witness testimony." (*Id.* at 9-10). Judge Nathan credited the

Government's proffer that "additional evidence, including flight records and other witnesses' corroborating testimony, will further support the main witnesses' testimony and link [Maxwell] to Epstein's conduct." (*Id.* at 10). She thus concluded that the case against Maxwell "remains strong." (*Id.*).

19. Judge Nathan found that Maxwell "continues to have substantial international ties and multiple foreign citizenships, and she continues to have familial and personal connections abroad." (*Id.* at 11). Judge Nathan was unpersuaded by Maxwell's offer to consent to extradition, noting that the "legal weight of the waivers is, at best, contested" and therefore the risk of flight remained "fundamentally unchanged." (*Id.* at 11-13). Judge Nathan further explained that Maxwell's "extraordinary financial resources also continue to provide her the means to flee the country and to do so undetected." (*Id.* at 13). Judge Nathan acknowledged that "letters of support" written by friends and family "substantiate the Defendant's claim that she has important ties to people in the United States," but found that the letters "leave unaltered the Court's conclusion that flight would not pose an insurmountable burden" for Maxwell in light of, among other things, her claim at the time of arrest that she was getting divorced, her lack of employment, and her significant ties to family and friends abroad. (*Id.* at 14-15).

20. Judge Nathan emphasized that Maxwell's "pattern of providing

incomplete or erroneous information to the Court or to Pretrial Services bears significantly" on her assessment of Maxwell's history and characteristics. (*Id.* at 15). Judge Nathan highlighted that in July 2020 Maxwell represented to Pretrial Services that she possessed around $3.5 million in assets, but in connection with her renewed request for bail presented a report on her finances that estimated the net worth of Maxwell and her spouse to be approximately $22.5 million as of October 2020. (*Id.* at 15). Judge Nathan found that the difference "makes it unlikely that the misrepresentation was the result of the Defendant's misestimation rather than misdirection." (*Id.* at 15-16). She explained:

> In sum, the evidence of a lack of candor is, if anything, stronger now than in July 2020, as it is clear to the Court that the Defendant's representations to Pretrial Services were woefully incomplete. That lack of candor raises significant concerns as to whether the Court has now been provided a full and accurate picture of her finances and as to the Defendant's willingness to abide by any set of conditions of release.

(*Id.* at 16).

21. Judge Nathan again concluded that Maxwell presented a risk of flight and that Maxwell's proposed bail package "cannot reasonably assure her appearance," as it "would leave unrestrained millions of dollars and other assets that she could sell in order to support herself" and the "proposed bond is only partially secured." (*Id.* at 16-18). Judge Nathan explained that the pledge of several third

parties to support Maxwell's bond did not alter this conclusion because "the amount of wealth that she would retain were she to flee, in addition to contingent assets and future income streams that are not accounted for in the bail package, would plausibly enable her to compensate them, in part or in full, for their losses." (*Id.* at 18). Judge Nathan also rejected Maxwell's proposed conditions of release to a relative's custody and private security guards, reiterating her concern regarding Maxwell's "extraordinary capacity to evade detection." (*Id.* at 18-19).

22. Finally, Judge Nathan was "unpersuaded" by Maxwell's argument "that the conditions of her confinement are uniquely onerous, interfere with her ability to participate in her defense, and thus justify release." (*Id.* at 20). Maxwell did not "meaningfully dispute" that she has received more time than other inmates at the Metropolitan Detention Center ("MDC") to review discovery and as much, if not more, time to communicate with her lawyers. (*Id.*). Judge Nathan reiterated that she would continue to ensure that Maxwell is able to speak and meet regularly with her attorneys and review discovery to prepare her defense. (*Id.* at 20 n.3).

D. The Third Bail Application

23. On February 23, 2021, Maxwell filed a third bail application, proposing two additional bail conditions: (1) renunciation of her French and British

citizenship; and (2) placement of a portion of her and her spouse's assets in a new account to be overseen by a monitor. (Ex. I). After considering multiple written submissions (Ex. I, J, K), Judge Nathan denied Maxwell's request in another written opinion. (Ex. L).

24. Judge Nathan concluded that Maxwell's new application did not disturb her prior conclusions. (*Id.* at 2). She reiterated that detention was warranted in light of the proffered strength and nature of the Government's case, Maxwell's "substantial international ties, familial and personal connections abroad, substantial financial resources, and experience evading detection," and Maxwell's "lack of candor regarding her assets" at the time of her arrest. (*Id.* at 7).

25. Judge Nathan rejected Maxwell's argument that the strength of the evidence was diminished by Maxwell's pending pre-trial motions. (*Id.* at 5-6). She also rejected the two additional conditions proposed by Maxwell, noting the "[c]onsiderable uncertainty regarding the enforceability and practical impact of the [foreign citizenship] renunciations," and finding that, despite the proposed monitorship, Maxwell "would continue to have access to substantial assets—certainly enough to enable her flight and to evade prosecution." (*Id.* at 10-11). Judge Nathan concluded, "If the Court could conclude that any set of conditions could reasonably assure the Defendant's future appearance, it would order her release. Yet

while her proposed bail package is substantial, it cannot provide such reasonable assurances." (*Id.* at 11).

E. Judge Nathan's Oversight of Maxwell's Conditions of Confinement

26. As she indicated she would, Judge Nathan has closely monitored Maxwell's conditions of confinement, including by ordering the Government to submit regular updates regarding that topic (*see* Gov't Ex. A (compiling update letters and relevant court orders)), and, in one instance, ordering the MDC to provide Maxwell access to a Government-issued laptop on weekends and holidays (*see id.* at 10-11). The Government most recently filed such an update on April 6, 2021, noting, among other things, Maxwell's extensive access to discovery and communications with counsel; her regular access to outdoor recreation; the thirteen hours per day during which she is brought to a day room outside of her cell with exclusive access to a television, a phone, two computers, and a shower; and her access to medical care, including the COVID-19 vaccine, which she has now received. (*Id.* at 17-22).

ARGUMENT

The District Court Properly Denied Maxwell's Motions for Bail and Temporary Release

27. Judge Nathan did not clearly err when she determined that Maxwell is a risk of flight and that no conditions would reasonably assure her appearance in court. Nor did Judge Nathan abuse her discretion or clearly err by denying Maxwell's request for temporary release.

A. Applicable Law

28. In seeking pretrial detention, the Government bears the burden of showing, by a preponderance of the evidence, that the defendant poses a risk of flight, and that no condition or combination of conditions would reasonably assure her presence in court. *See* 18 U.S.C. § 3142(f); *United States v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007).

29. Where the defendant is charged with certain offenses, including offenses involving a minor victim under 18 U.S.C. §§ 2422 or 2423, a statutory presumption arises "that no condition or combination of conditions will reasonably assure the appearance of the person as required . . . ." 18 U.S.C. § 3142(e)(3)(E). In such a case, the defendant "bears a limited burden of production—not a burden of persuasion—to rebut that presumption by coming forward with evidence that he does not pose a … risk of flight." *United States v. Mercedes*, 254 F.3d 433, 436 (2d

Cir. 2001). Even where a defendant produces sufficient evidence to rebut the statutory presumption of detention, the presumption does not disappear; instead, it becomes a factor to be weighed and considered in deciding whether release is warranted. *Id.*

30. Where the Government seeks detention based on flight risk, the court must consider: (1) "the nature and circumstances of the offense charged"; (2) "the weight of the evidence against the person"; and (3) the "history and characteristics of the person." 18 U.S.C. § 3142(g).

31. This Court generally applies "deferential review to a district court's order of detention." *United States v. Watkins*, 940 F.3d 152, 158 (2d Cir. 2019). It reviews for clear error the district court's findings regarding risk of flight and whether the proposed bail package would reasonably assure the defendant's appearance in court, *see United States v. English*, 629 F.3d 311, 319 (2d Cir. 2011); *United States v. Shakur*, 817 F.2d 189, 196 (2d Cir. 1987), and will reverse only if "on the entire evidence," it is "left with the definite and firm conviction that a mistake has been committed," *Sabhnani*, 493 F.3d at 75.

32. Once a defendant has been ordered detained, a judicial officer may "permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer

determines such release to be necessary for preparation of the person's defense or for another compelling reason." 18 U.S.C. § 3142(i). The defendant bears the burden of showing that temporary release is necessary. *See United States v. Scarborough*, 821 F. App'x 598, 600 (6th Cir. 2020); *United States v. Belardo*, No. 20 Cr. 126 (LTS), 2020 WL 1689789, at *2 (S.D.N.Y. Apr. 7, 2020). This Court has not resolved whether it reviews a district court's temporary release decision for abuse of discretion or clear error. *See United States v. McCloud*, 837 F. App'x 852, 853 n.3 (2d Cir. 2021).

B. Discussion

1. The District Court Did Not Clearly Err By Denying Bail

33. Judge Nathan did not commit clear error in finding, three times, that the Government established by a preponderance of the evidence that Maxwell is a risk of flight and no bail conditions could reasonably assure her appearance in court. In three detailed, thorough decisions, rendered after hearing lengthy argument and receiving multiple rounds of briefing, Judge Nathan explained that detention was appropriate in light of the nature and circumstances of the offense, which carry a presumption of detention; the strength of the Government's proffered evidence, which was based on multiple victims and contemporaneous documentary corroboration; and Maxwell's history and characteristics, including her substantial

international ties, multiple foreign citizenships, familial and personal connections abroad, ownership of at least one foreign property of significant value, lack of candor about her finances, and "extraordinary capacity to evade detection." (Ex. D at 79-91; Ex. H at 7-20; Ex. L at 6-11). Maxwell does not come close to identifying clear error.

34. Maxwell principally argues that Judge Nathan placed undue reliance on Government proffers in assessing the weight of the evidence. (Br. 19-21). Not so. "It is well established in this circuit that proffers are permissible both in the bail determination and bail revocation contexts." *United States v. LaFontaine*, 210 F.3d 125, 131 (2d Cir. 2000). "[B]ail hearings are typically informal affairs, not substitutes for trial or even for discovery. Often the opposing parties simply describe to the judicial officer the nature of their evidence; they do not actually produce it." *Id.*; *see also United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) ("a detention hearing is not to serve as a mini-trial … or as a discovery tool for the defendant"). This Court has thus repeatedly upheld the Government's ability to proceed by proffer in bail proceedings. *See, e.g.*, *United States v. Cirillo*, 149 F. App'x 40, 42-43 (2d Cir. 2005); *United States v. Abuhamra*, 389 F.3d 309, 321 n.7 (2d Cir. 2004); *United States v. Vondette*, 5 F. App'x 73, 76 (2d Cir. 2001); *Martir*, 782 F.2d at 1145.

35. Judge Nathan's reliance on the Government's proffers was entirely proper, particularly on the facts of this case. This is not a case where the Government "simply stat[ed] in general and conclusory terms what it hoped to prove," or where the Government proffered the statements of a single witness with a history of perjury. *LaFontaine*, 210 F.3d at 131. The Indictment—which reflects far more than just a proffer but instead the probable cause determination of the grand jury after receiving evidence—sets forth in detail the expected testimony of three victim-witnesses, describing specific actions Maxwell took with respect to each. (Ind. ¶ 7(a)-(c)). And as the Government explained, each victim-witness's testimony is corroborated by the testimony of other witnesses and by documentary evidence. (Ex. A at 5; Ex. F at 9-12). Judge Nathan was entitled to rely on these proffers in assessing the strength of the evidence.

36. Maxwell's remaining arguments repeat contentions made below but do not meaningfully engage with Judge Nathan's considered rejection of them. Maxwell disputes that she was hiding from law enforcement before her arrest (Br. 23-24), but Judge Nathan was dubious of that assertion and found that even assuming Maxwell was hiding from the media, not the Government, her evasive actions demonstrated her "extraordinary capacity to evade detection." (Ex. D at 87). Maxwell asserts in conclusory fashion that her proposed bail package alleviates any

concerns about her foreign citizenship or substantial assets (Br. 24-25), but Judge Nathan thoroughly analyzed these assertions and, after multiple rounds of briefing regarding the efficacy of Maxwell's proposed package, was not persuaded. (Ex. H at 11-14; Ex. L at 8-11). Maxwell attempts to compare herself to other high-profile defendants (Br. 25), but Judge Nathan rejected the comparison, noting "crucial factual differences" in several of these cases (Ex. D at 88) and making extensive findings about the particular facts and circumstances of this case that make detention appropriate. None of this was clear error.

2. The District Court Did Not Clearly Err or Abuse Its Discretion by Denying Temporary Release

37. Maxwell also argues that she should be temporarily released—though she specifies no end date—because she cannot effectively prepare her defense under the conditions of her confinement. (Br. 13-19). Judge Nathan did not abuse her discretion or clearly err by concluding otherwise.[6] To the contrary, Judge Nathan has gone to significant lengths to ensure that Maxwell has adequate access to her counsel and opportunity to prepare her defense.

[6] As noted, this Court has not resolved which standard of review applies to such an application. The Government submits that the decision of whether temporary release is "necessary" is a mixed question of law and fact which, like the district court's bail determination, should be reviewed for clear error. *See United States v. Mattis*, 963 F.3d 285, 291 (2d Cir. 2020). The Court need not resolve the matter here, however, as Maxwell's claim fails under either standard of review.

38. At the outset, it bears noting that Maxwell only specifically invoked Section 3142(i) in her first bail motion. (Ex. B at 5-9). Judge Nathan denied her request for temporary release under that provision, noting that the case was in its early stages and that the MDC has established procedures to ensure access to counsel despite the pandemic. (Ex. D at 89-90). Nevertheless, Judge Nathan ordered the Government to work with the defense to ensure adequate access to counsel and invited Maxwell to make further applications if the accommodations were "inadequate in any way." (*Id.* at 90-91). Maxwell did not appeal Judge Nathan's first detention order. Instead, she repeatedly availed herself of the invitation to raise concerns about her access to counsel, and Judge Nathan responded with significant oversight of Maxwell's conditions of confinement. (*See* Gov't Ex. A). Thus, when Maxwell again cited her conditions of confinement in her second bail motion—though she did not, this time, invoke Section 3142(i) (Ex. E at 35-38)—Judge Nathan observed that Maxwell "does not meaningfully dispute that she has received more time than any other inmate at the MDC to review her discovery and as much, if not more, time to communicate with her attorneys." (Ex. H at 20). And, again, Judge Nathan made clear that she would "continue to ensure" that Maxwell has such accommodations as are necessary to prepare her defense and invited Maxwell to make further applications. (*Id.* at 20 n.3). Judge Nathan continued to oversee

Maxwell's access to counsel, and Maxwell did not renew her request for temporary release in her third bail motion.[7]

39. Under these circumstances, Judge Nathan can hardly be said to have abused her discretion by finding that temporary release is not "necessary" for Maxwell to prepare her defense. "Temporary release is not warranted when a defendant has had ample time to prepare his defense." *Scarborough*, 821 F. App'x at 601. That is the case here. Maxwell is represented by a team of highly qualified, retained counsel, and has resources to prepare her defense far beyond those of the average defendant. Maxwell has access to a desktop computer provided by the MDC and a laptop provided by the Government for Maxwell's exclusive use to review discovery thirteen hours per day, seven days per week. (Ex. F at 29-30; Gov't Ex. A at 17-18). Also during that time, Maxwell has access to email with defense counsel, calls with defense counsel, and legal visits (depending on pandemic-related conditions).[8] (Ex. F at 29-30; Gov't Ex. A at 18-19). Maxwell currently receives

[7] Thus, to the extent Maxwell's arguments about her ability to prepare for trial are tied to any developments since the time of her first bail motion—such as, for example, the imminency of trial (*see* Br. 17)—this Court need not address such arguments in the first instance. *Cf. United States v. Hochevar*, 214 F.3d 342, 344 (2d Cir. 2000).

[8] In-person visitation at the MDC resumed on or about February 16, 2021. Attorney visits are permitted seven days per week. (Ex. A at 18-19).

five hours of video-teleconference calls with her counsel every weekday. (Gov't Ex. A at 18).

40. Given these accommodations, Maxwell's argument amounts to a suggestion that *any* defendant in a case with voluminous discovery must be released on bail to prepare for trial, regardless of flight risk or danger to the community. That cannot be the law. Rather, "[i]n considering whether there is a 'compelling reason' for a defendant's release under [Section 3142(i)], a court must balance the reasons advanced for such release against the risks that were previously identified and resulted in an order of detention." *United States v. Chambers*, No. 20 Cr. 135 (JMF), 2020 WL 1530746, at *1 (S.D.N.Y. Mar. 31, 2020). Here, that balance emphatically favors detention, given Judge Nathan's repeated findings about risk of flight and the substantial accommodations made to ensure Maxwell's ability to prepare her defense.

41. The risks presented by COVID-19 do not alter this conclusion. Not only does Maxwell have no underlying conditions that place her at heightened risk of complications from COVID-19 (Ex. D at 89-90; Ex. H at 21), but she now has been fully vaccinated (Gov't Ex. A at 19, 21). And while some district courts have ordered temporary release based in part on the COVID-19 pandemic, each of these discretionary decisions rests on its particular facts, as Judge Nathan was well-

positioned to note with respect to the principal case cited below. (*See* Ex. D at 90-91 (distinguishing *United States v. Stephens*, 447 F. Supp. 3d 63, 67 (S.D.N.Y. 2020))).

42. In sum, Judge Nathan acted well within her substantial discretion by denying Maxwell's motion for temporary release.

CONCLUSION

43. For the foregoing reasons, Maxwell's motion should be denied.

Dated: New York, New York
April 12, 2021

/s/ Lara Pomerantz
Maurene Comey / Alison Moe / Lara Pomerantz
Assistant United States Attorneys
Southern District of New York
Telephone: (212) 637-2343

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel hereby certifies that this opposition complies with the type-volume limitation of the Federal Rules of Appellate Procedure. As measured by the word processing system used to prepare this opposition, there are 5,200 words in this opposition.

/s/ Lara Pomerantz
LARA POMERANTZ
Assistant United States Attorney
Southern District of New York
Telephone: (212) 637-2343

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

November 23, 2020

BY ECF

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Judge Nathan:

The Government respectfully submits this letter to provide an update regarding the defendant's conditions of confinement at the Metropolitan Detention Center ("MDC") pursuant to the Court's Order dated August 25, 2020. (Dkt. No. 49). Over the past three months, the Government has had multiple conversations with MDC legal counsel regarding the defendant's conditions of confinement. This update is based on information provided to the Government by MDC legal during those conversations.

Last week, a staff member who was assigned to work in the area of the MDC where the defendant is housed tested positive for COVID-19. In response, the MDC implemented the same quarantine protocols that apply whenever an inmate has potentially been exposed to the virus. Specifically, on November 18, 2020, the defendant was tested for COVID-19 using a rapid test, which was negative. That same day, the defendant was placed in quarantine. As with any other quarantined inmate, the defendant will remain in quarantine for fourteen days, at which point she will be tested again for COVID-19. If that test is negative, she will then be released from quarantine. To date, the defendant has not exhibited any symptoms of COVID-19.

During her time in quarantine, the defendant will be housed in the same cell where she was already housed before she was placed in quarantine, and medical staff and psychology staff will continue to check on the defendant every day. Like all other MDC inmates in quarantine, the defendant will be permitted out of her cell three days per week for thirty minutes. During that time, the defendant may shower, make personal phone calls, and use the CorrLinks email system. In addition, the defendant will continue to be permitted to make legal calls every day for up to three hours per day. These calls will take place in a room where the defendant is alone and where no MDC staff can hear her communications with counsel.

On November 18, 2020, the Government provided the MDC with a laptop for the defendant to use to review discovery. During quarantine, the defendant has been and will continue to be permitted to use that laptop in her isolation cell to review her discovery for thirteen hours per day,

seven days per week. Accordingly, the defendant is receiving the same amount of time to review her discovery and the same amount of time to speak with her lawyers as she received before entering quarantine. The defendant will not, however, be permitted to meet in person with her lawyers until she tests out of quarantine.

After the defendant tests out of quarantine, she will resume the same schedule that the MDC implemented approximately three months ago. Specifically, from 7am to 8pm every day, the defendant will be permitted out of her isolation cell. During those thirteen hours, the defendant will have access to a computer on which to review her discovery outside of her cell. Also during the day, the defendant will be permitted to, among other things, make legal calls, make personal calls, access CorrLinks, and shower. From 8pm to 7am, the defendant will remain in her isolation cell. The defendant will also be permitted to have in-person visits with her attorneys up to three days per week for multiple hours per visit. On days when the defendant does not have in-person legal visits, she will have access to legal calls for up to three hours per day.

As was the case three months ago, the defendant continues to have more time to review her discovery than any other inmate at the MDC, even while in quarantine. The defendant also has as much, if not more, time as any other MDC inmate to communicate with her attorneys, even while in quarantine.

As noted above, over the past three months, the Government has repeatedly communicated both with MDC legal counsel and defense counsel regarding the defendant's conditions of confinement. Whenever the defense has raised a concern on this topic, the Government has immediately contacted MDC legal counsel to inquire about and, where appropriate, to address the concern. The Government will continue to keep those lines of communication open and will remain responsive to any concerns raised by the defense regarding the defendant's conditions of confinement. Should the Court have any questions or require any additional details regarding this topic, the Government will promptly provide additional information.

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

By: _____
Maurene Comey / Alison Moe / Lara Pomerantz
Assistant United States Attorneys
Southern District of New York
Tel: (212) 637-2324

Cc: All Counsel of Record (By ECF)

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

December 1, 2020

BY ECF
The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Judge Nathan:

The parties jointly submit this letter in response to the Court's November 24, 2020 order directing the parties to meet and confer regarding the defendant's request that the warden of the Metropolitan Detention Center ("MDC") report directly to the Court and counsel on the defendant's conditions of detention. (Dkt. No. 76). Over the past week, the Government has spoken with MDC legal counsel regarding the defendant's conditions of confinement and has tried to gather additional information regarding the concerns raised by the defendant, which the Government has shared with defense counsel. The Government has also conferred with defense counsel three times regarding the same, as well as the defense's request relating to MDC Warden Heriberto Tellez. The parties have been unable to reach agreement. Our respective positions follow.

The Government respectfully submits that the Court should allow MDC legal counsel to respond directly in writing to the Court and defense counsel regarding the concerns defense counsel has raised relating to the defendant's conditions of confinement. The Government understands that MDC legal counsel is prepared to submit a letter by this Friday, December 4, 2020. Such a letter is the appropriate next step at this time, as it will allow the Court to hear directly from MDC legal counsel who can address the defendant's conditions of confinement. The letter will allow the Court to ascertain whether further inquiry, including a personal appearance by the Warden or other MDC personnel, is necessary. Moreover, the Government does not understand the concerns raised by the defense to implicate the defendant's access to legal materials or her ability to communicate with her counsel. As noted in the Government's letter dated November 23, 2020, the defendant continues to have more time to review her discovery than any other inmate at the MDC. The defendant also has as much, if not more, time as any other MDC inmate to communicate with her attorneys. (Dkt. No. 74).

The defense disagrees. As communicated to the Government, the defense's position is as follows: Warden Heriberto Tellez should appear before the Court to directly address concerns regarding Ms. Maxwell's conditions of confinement, which specifically target her. On October 29, 2020, the defense emailed a letter to Warden Tellez detailing the onerous and restrictive conditions, including but not limited to concerns regarding the supplemental camera; excessive

searching (e.g., weekly body scan, 15-minute interval flashlight checks at night, and open-mouth inspection) despite being surveilled 24/7 by a dedicated three-guard security detail and two cameras; and the reason she is not being moved to the day room, which we understood was the original plan (and would reduce searching). Receipt of the letter was acknowledged, but to date there has been no response and little, if any, redress to the most serious conditions. Upon information and belief, decisions concerning Ms. Maxwell's specialized detention are made by Warden Tellez, or from others outside the MDC. A report from the MDC Legal Department would provide second-hand information. Accordingly, Warden Tellez should be directed to provide a first-hand accounting to the Court and counsel why Ms. Maxwell is being detained under such individualized conditions.

Your consideration is greatly appreciated.

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

By: s/
Maurene Comey / Alison Moe / Lara Pomerantz
Assistant United States Attorneys
Southern District of New York
Tel: (212) 637-2324

Cc: All Counsel of Record (By ECF)

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons
Metropolitan Detention Center

80 29h Street
Brooklyn, New York 11232

December 4, 2020

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: ***United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)**
Ghislaine Maxwell, Reg. No. 02879-509

Dear Judge Nathan:

This letter is written in response to your order dated December 2, 2020, concerning Ghislaine Maxwell, Reg. 02879-509., an inmate currently confined at the Metropolitan Detention center in Brooklyn, New York. You expressed various concerns regarding Ms. Maxwell's confinement and well-being.

The Bureau of Prisons' (BOP) policies and procedures are designed to ensure staff and inmates can work and live in a safe and secure environment. In determining Ms. Maxwell's current housing assignment, MDC Brooklyn considered various factors including Ms. Maxwell's expressed concern for her safety and well-being amongst the general inmate population. We have discussed our decision with Ms. Maxwell several times and provided her with guidance as to how to address any concerns through her Unit Team or the BOP's Administrative Remedy Program, 28 C.F.R. §§ 542.10 – 542.19. To date, staff have addressed her complaints in accordance with BOP policies.

In her current assignment, Ms. Maxwell, like other inmates housed at MDC Brooklyn, is allowed access to the common area of the housing unit from 7:00 AM through 8:00 PM, daily. She has access to recreational space, social calls, television, shower, legal telephone calls, email, computers, and discovery material. A discovery laptop is available to her from 8:00 AM through 5:00 PM. When Ms. Maxwell returns to her cell at 8:00 PM, like other inmates she has access to drinking water, snacks she purchased through the commissary, and discovery material. Since August 3, 2020, Ms. Maxwell has been able to purchase items from the full commissary list. She receives commissary every second week like all other inmates.

MDC Brooklyn correctional staff utilize flashlights when viewing inmate cells overnight to ensure

inmates are breathing and not in distress. Inmates in BOP custody are subject to searches, including body scanners, and inmates may be searched prior to moving from one area of the facility to another. The removal of Ms. Maxwell's face mask complies with the BOP's COVID-19 Pandemic Response Plan.

Since Ms. Maxwell's arrival, she has been provided three (3) meals a day in accordance with BOP policy and its National Menu. Food Service staff have addressed Ms. Maxwell's requests. Ms. Maxwell is served her breakfast upon entering the common area of the housing unit at 7:00 AM; at noon she is served her lunch; and at 5:00 PM she is served dinner. Her medical records show that she currently weighs 134 lbs., which fluctuates plus or minus 2 lbs. Health Services staff make regular rounds of her housing unit and she has been instructed on how to request medical care through the sick call procedures. Furthermore, while there has been a number of inmates whom have tested positive for COVID-19, Ms. Maxwell remains in good health and is not in contact with those individuals. The BOP staff is assigned to Ms. Maxwell's unit do not come in contact with the other individuals whom have tested positive. Lastly, the temperature of Ms. Maxwell's cell is checked three times daily to ensure it is in compliance with national standards.

In accordance with the BOP's COVID-19 Pandemic Response Plan, inmates are allotted 500 minutes per month of social telephone calls, which Ms. Maxwell has used throughout her time at MDC Brooklyn. While Ms. Maxwell has received one legal video conference, she continues to have full access to legal telephone calls and in person legal visits. Pursuant to the District Courts guidance, legal telephone calls are scheduled through the Federal Defenders, who should be afforded an opportunity to address any concerns Ms. Maxwell's attorneys have with the legal calls.

I trust this has addressed your concerns.

Respectfully submitted,

/s/ *Sophia Papapetru*

Sophia Papapetru
Staff Attorney
MDC Brooklyn
Federal Bureau of Prisons

/s/ *John Wallace*

John Wallace
Staff Attorney
MDC Brooklyn
Federal Bureau of Prisons

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

On December 4, 2020, the Court received a letter from MDC legal counsel responding to the concerns that the Defendant raised in her November 24, 2020 letter. *See* Dkt. Nos. 75, 88; *see also* Dkt. No. 78. The Defendant responded to the MDC legal counsel's letter on December 7, 2020, reiterating her request that the Court summon Warden Heriberto Tellez to personally respond to questions from the Court regarding the Defendant's conditions of confinement. *See* Dkt. No. 91. Having carefully reviewed the parties' submissions, along with the MDC legal counsel's December 4, 2020 letter, the Court DENIES the Defendant's request to summon the Warden to personally appear and respond to questions. This resolves Dkt. No. 75.

Notwithstanding this, as originally provided in Dkt. No. 49, the Government shall continue to submit written status updates detailing any material changes to the conditions of Ms. Maxwell's confinement, with particular emphasis on her access to legal materials, including legal mail and email, and her ability to communicate with defense counsel. The updates shall also include information on the frequency of searches of the Defendant.

The Court hereby ORDERS the Government to submit these written updates every 60 days. Furthermore, the Government shall take all necessary steps to ensure that the Defendant

continues to receive adequate access to her legal materials and her ability to communicate with defense counsel.

SO ORDERED.

Dated: December 8, 2020
New York, New York

ALISON J. NATHAN
United States District Judge

COHEN & GRESSER LLP

800 Third Avenue
New York, NY 10022
+1 212 957 7600 phone

Christian R. Everdell
+1 (212) 957-7600
ceverdell@cohengresser.com

January 14, 2021

BY ECF

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Judge Nathan:

We write on behalf of our client, Ghislaine Maxwell, to respectfully request that the Court order the Bureau of Prisons to give Ms. Maxwell access to the laptop computer provided by the government so that she can review discovery on weekends and holidays.

At the request of defense counsel, the government provided Ms. Maxwell with a laptop computer to review the voluminous discovery, which was produced on a series of external hard drives. Currently, Ms. Maxwell is given access to the laptop only on weekdays. On weekends and holidays, Ms. Maxwell must use the prison computer on her floor to review discovery. However, the prison computer is not equipped with the software necessary to read large portions of the discovery recently produced by the government. As a result, Ms. Maxwell loses several days of review time every weekend and every holiday because she does not have access to the laptop. If Ms. Maxwell is to have any hope of reviewing the millions of documents produced in discovery so that she can properly prepare her defense by the July 12, 2021 trial date, she must have access to the laptop every day, including weekends and holidays.

Defense counsel has raised this issue with the government and it has no objection to Ms. Maxwell having access to the laptop seven days a week. At the request of defense counsel, the government has contacted officials at the MDC on several occasions in the past few weeks to request that they lift this restriction, but without success.

There is no principled justification for this restriction. Ms. Maxwell was given access to the laptop every day (including weekends and the Thanksgiving holiday) for the entire 14-day period that she was quarantined in her isolation cell in November-December 2020 because she had come into close contact with a member of the MDC staff who had tested positive for COVID. In addition, the laptop is kept in a locker in the same room where the prison computer is located, so it

would not require any change in Ms. Maxwell's movements to give her the requested access. Furthermore, on at least three occasions since she was released from quarantine, Ms. Maxwell's security team gave her the laptop to review discovery on the weekend.

There is clearly no actual impediment preventing the MDC staff from providing Ms. Maxwell access to the laptop on weekends and holidays. Given the millions of documents that Ms. Maxwell must review before trial in order to prepare her defense, it is critical that she be given as much time as possible with the laptop to review the discovery. We therefore respectfully request that the Court order the BOP to give Ms. Maxwell access to the laptop on weekends and holidays during the hours that she is permitted to review discovery.

Sincerely,

/s/ Christian Everdell

Christian R. Everdell
COHEN & GRESSER LLP
800 Third Avenue, 21st Floor
New York, New York 10022
(212) 957-7600

cc: All Counsel of Record (By ECF)

The unobjected-to request is GRANTED. The Bureau of Prisons is ORDERED to give the Defendant access to the laptop computer on weekends and holidays during the hours that she is permitted to review discovery. SO ORDERED.

1/15/21

ALISON J. NATHAN
United States District Judge

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons
Metropolitan Detention Center

80 29h Street
Brooklyn, New York 11232

January 25, 2021

BY ECF

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

2/2/21

ALISON J. NATHAN
United States District Judge

Having considered the request submitted by the Bureau of Prisons ("BOP") that the Court vacate its January 15, 2021 Order, Dkt. No. 117, as well as the Government's and the Defendant's responses, Dkt. Nos. 129, 130, the Court hereby DENIES the BOP's request to vacate the Order. SO ORDERED.

Re: ***United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)**
Ghislaine Maxwell, Reg. No. 02879-509

Dear Judge Nathan:

This letter is written in response to Order granted on January 15, 2021, concerning Ghislaine Maxwell, Reg. 02879-509., an inmate currently confined at the Metropolitan Detention Center ("MDC") in Brooklyn, New York. The MDC Brooklyn respectfully requests that Your Honor vacate the Order given MDC Brooklyn was not given the opportunity to object to defense counsel's claims, although the objection had been reiterated to the U.S. Attorney's Office numerous times.

Defense counsel expressed various concerns regarding Ms. Maxwell's confinement limiting her access to discovery. However, Ms. Maxwell has received a significant amount of time to review her discovery. On November 18, 2020, the Government provided the MDC Brooklyn with a laptop for Ms. Maxwell to use to review discovery. Ms. Maxwell has been and will continue to be permitted to use that laptop to review her discovery for thirteen (13) hours per day, five (5) days per week. In addition to the Government laptop, she has access to the MDC Brooklyn discovery computers. Although defense counsel has indicated that the MDC Brooklyn discovery computers are not equipped to read all of her electronic discovery, the computers are capable of reviewing most of the electronic discovery. Despite defense counsel's claim that Ms. Maxwell's lacks sufficient time to fully review her discovery, her consistent use of Government laptop and MDC Brooklyn's discovery computers undercuts this claim.

Moreover, Ms. Maxwell continues to have contact with her legal counsel five (5) days per week, three (3) hours per day via video-teleconference and via telephone; this is far more time than any other MDC inmate is allotted to communicate with their attorneys.

We respectfully request that Your Honor vacate the order of January 15, 2021, and allow the institution to resume the prior schedule of laptop access, Monday through Friday, 7:00 AM – 8:00 PM.

Respectfully submitted,

/s/ *Sophia Papapetru*

Sophia Papapetru
Staff Attorney
MDC Brooklyn
Federal Bureau of Prisons

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

February 1, 2021

BY ECF

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Judge Nathan:

The Government respectfully submits this letter in response to the Court's January 25, 2021 order allowing the parties to respond to a letter from legal counsel at the Metropolitan Detention Center ("MDC") also dated January 25, 2021. (Dkt. No. 117). In particular, MDC legal counsel asks the Court to vacate its January 15, 2021 order directing the MDC to permit the defendant to use a laptop to review discovery on weekends and holidays. While the Government has no objection to the defendant's request for additional laptop access, the Government also generally defers to the MDC regarding how it manages its inmate population. The Government will continue to defer to the MDC here, particularly because the defendant has had ample access to discovery even without laptop access on weekends and holidays.

Given the volume of discovery in this case, which totals more than two million pages, the Government and the MDC have both made significant efforts to ensure that the defendant has extensive access to her discovery materials. Since the Government made its first discovery production in August 2020, the defendant has had exclusive access to a BOP desktop computer in the MDC on which to review her discovery. When the defendant complained of technical issues reviewing portions of her discovery on that desktop computer, the Government produced reformatted copies of discovery materials and instructions regarding how to open particular files. Because the defendant continued to complain that she was unable to review certain discovery files on the desktop computer, the Government agreed to provide a laptop for the defendant to use in her review of discovery. On November 18, 2020, the Government hand delivered the laptop to the MDC for the defendant's exclusive use.

As the Court is aware, the defendant has received, and continues to receive more time to review her discovery than any other inmate at the MDC. In particular, the MDC permits the defendant to review discovery thirteen hours per day, seven days per week. On weekdays, the MDC permits the defendant to use the laptop during her thirteen hours of daily review time. On weekends and holidays, the MDC would ordinarily only allow the defendant to use the BOP desktop computer, which provides access to much of the discovery material. While, as noted above, the Government has no particular objection to the defendant's request for weekend access

to the laptop, the Government generally defers to the judgment of the MDC in managing inmates at its facility, and sees no reason to depart from that practice here. In this respect, the Government notes that the trial date remains approximately six months away, the BOP was already affording the defendant access to the laptop for some 65 hours a week, and the BOP was further providing weekend access to a desktop computer should the defendant wish to spend more than 65 hours each week reviewing discovery.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney

By: s/
Maurene Comey / Alison Moe / Lara Pomerantz
Assistant United States Attorneys
Southern District of New York
Tel: (212) 637-2324

Cc: All Counsel of Record (By ECF)

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

February 4, 2021

BY ECF

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Judge Nathan:

The Government respectfully submits this letter to provide an update regarding the defendant's conditions of confinement at the Metropolitan Detention Center ("MDC") pursuant to the Court's Order dated December 8, 2020. (Dkt. No. 92). Over the past two months, the Government has had multiple communications with MDC legal counsel regarding the defendant's conditions of confinement. This update is based on information provided to the Government by MDC legal counsel through those communications.

The defendant continues to receive more time to review discovery than any other inmate at the MDC. Specifically, the defendant is permitted to review her discovery thirteen hours per day, seven days per week. During the entirety of that time, the defendant has access to a desktop computer provided by the MDC on which to review discovery. Additionally, pursuant to the Court's January 15, 2021 Order, the defendant also has access to a laptop computer provided by the Government on which to review discovery for the full thirteen hours per day, seven days per week. Also during those thirteen hours per day, the defendant may use the MDC desktop computer to send and receive emails with her attorneys.

The defendant also has as much, if not more, time as any other MDC inmate to communicate with her attorneys. Due to the elevated number of COVID-19 cases within the MDC, in-person visits have been suspended since in or about December 2020. While in-person visits are suspended, the defendant has had regular video-teleconference ("VTC") calls with her counsel. In particular, the defendant has VTC calls with her counsel every weekday for three hours per call. If defense counsel requires additional time to speak with the defendant, counsel may request to schedule an additional phone call on Saturdays as needed. All of these VTCs and telephone calls take place in a room where the defendant is alone and where no MDC staff can hear her communications with counsel.

The defendant's legal mail is processed in the same manner as mail for all other inmates at the MDC. All inmate mail is sent to the MDC's mail room, where every piece of mail is processed

before being provided to the inmate recipient. Due to the large number of MDC inmates and the volume of mail received at the MDC, this process can take multiple days. As noted above, however, the defendant is able to send and receive emails with defense counsel every day and has regular communication with counsel via VTC.

MDC staff conduct two pat-down searches of the defendant per day: once when she is moved from her isolation cell to the day room each morning, and once when returns from the day room to her isolation cell each night. As part of those searches, the defendant is required to remove her mask and open her mouth briefly so that MDC staff, who remain masked during the searches, can confirm she has not hidden contraband in her mouth. These pat-down and mouth searches are consistent with MDC's policy that all inmates be searched whenever they move to a different location within the jail facility. Previously, the defendant attended VTC conferences in a separate part of the MDC, requiring that she be searched when taken to and from her VTC calls with counsel. Recently, however, the MDC changed the location of the defendant's VTC calls so that the defendant does not need to leave her unit in order to attend VTC calls with her counsel, thereby reducing the number of searches. During the suspension of visitation, the defendant has not been strip searched. When visitation resumes, the defendant, like all other inmates, will be strip searched after any in-person visit.

In addition, MDC staff search the defendant's cell for contraband once per day. MDC staff also conduct a body scan on the defendant once per week to check for any secreted contraband. At night, MDC staff are required to confirm that the defendant is not in distress every fifteen minutes. To do so, staff point a flashlight to the ceiling of the defendant's cell to illuminate the cell sufficiently to confirm that the defendant is breathing every fifteen minutes. The MDC continues to assess that these searches are all necessary for the safety of the institution and the defendant.

Should the Court have any questions or require any additional details regarding this topic, the Government will promptly provide additional information.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney

By: _____
Maurene Comey / Alison Moe / Lara Pomerantz
Assistant United States Attorneys
Southern District of New York
Tel: (212) 637-2324

Cc: All Counsel of Record (By ECF)

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

April 6, 2021

BY ECF

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Judge Nathan:

The Government respectfully submits this letter to provide an update regarding the defendant's conditions of confinement at the Metropolitan Detention Center ("MDC") pursuant to the Court's Order dated December 8, 2020. (Dkt. No. 92). This update is based on information provided to the Government by MDC legal counsel regarding the conditions of the defendant's confinement over the last two months.

The defendant continues to receive more time to review discovery than any other inmate at the MDC. Specifically, the defendant is permitted to review her discovery thirteen hours per day, seven days per week. During the entirety of that time, the defendant has access to both a desktop computer provided by the MDC and a laptop computer provided by the Government on which to review discovery. Also during those thirteen hours per day, the defendant may use the MDC desktop computer to send and receive emails with her attorneys.[1] This discovery review

[1] Per BOP policy, all inmate emails are routinely purged every six months. In response to complaints from the defendant and defense counsel regarding prematurely deleted emails, MDC staff examined the defendant's inmate email account. That examination revealed that the defendant had herself deleted some of her emails and had archived others. That examination revealed no evidence to suggest that MDC staff deleted any of the defendant's emails.

takes place in a day room that is separate from the defendant's isolation cell. Accordingly, the defendant is permitted out of her cell from 7am to 8pm every day. While in the day room, the defendant has exclusive access to the MDC desktop computer, the laptop, a television, a phone on which to place social or attorney calls, and a shower. The defendant is also permitted outdoor recreation every day, although she has the option of declining such recreation time if she wishes.

The defendant also has as much, if not more, time as any other MDC inmate to communicate with her attorneys. Currently, the defendant receives five hours of video-teleconference ("VTC") calls with her counsel every weekday, for a total of 25 hours of attorney VTC calls per week. At times, unexpected incidents, such as institution-wide lockdowns or short staffing, delay the defendant's arrival to her VTC call with counsel by up to 30 minutes. When such delay occurs, however, the MDC permits the defendant to make up for any missed time either by extending that day's VTC call or by permitting the defendant extra time on the next day's VTC call. All of these VTC calls take place in a room where the defendant is alone and where no MDC staff can hear her communications with counsel. During these VTC calls, MDC staff place a camera approximately 30 feet away from the door to the room where the defendant conducts the VTC calls. The camera has a full view of the door to the VTC room, but the camera cannot view either the defendant or her attorneys while the door is closed during VTC calls. The camera does not capture any sound from the defendant's VTC calls with her attorneys. In other words, the camera records who enters and exits the VTC room, but it does not record activity inside the VTC room. The defendant is also permitted to use the phone in the day room to place phone calls to her attorneys as needed.

In addition, defense counsel now have the option of meeting with the defendant in person at the MDC. On or about February 16, 2021, the MDC resumed in-person visitation. As a result,

in-person attorney visits are now available seven days per week. The MDC has placed HEPA air filters in its attorney visiting rooms to improve air quality during visits. Additionally, the defendant has received the COVID-19 vaccine and is now fully vaccinated. The Government understands that defense counsel have thus far declined to meet with the defendant in person and instead rely on VTC calls, email, and supplemental phone calls to communicate with their client. The option of in-person visits remains available seven days per week should defense counsel wish to meet with the defendant in person.

The defendant's legal mail is processed in the same manner as mail for all other inmates at the MDC. All inmate mail is sent to the MDC's mail room, where every piece of mail is processed before being provided to the inmate recipient. Due to the large number of MDC inmates and the volume of mail received at the MDC, this process can take multiple days. As noted above, however, the defendant is able to send and receive emails with defense counsel every day and has regular communication with counsel via VTC, which can be supplemented by phone calls.

Like any other inmate, the defendant is patted down by MDC staff whenever she is moved to a different part of the facility. Typically, these searches include at least two pat-down searches of the defendant per day: once when she is moved from her isolation cell to the day room each morning, and once when returns from the day room to her isolation cell each night. In addition, when the defendant elects to attend outdoor recreation, she is searched two additional times: once when she is moved to the recreation area, and once when she returns to the day room from the recreation area. MDC staff also conduct a body scan, which is a non-invasive machine scan, on the defendant once per week to check for any secreted contraband. Because those scans take place in a different part of the facility than the day room, the defendant is patted down two additional times when these weekly scans occur: once when she is moved to the scan area, and once when

she returns to the day room from the scan area. As part of every pat-down search, the defendant is required to remove her mask and open her mouth briefly so that MDC staff, who remain masked during the searches, can confirm she has not hidden contraband in her mouth.[2] These pat-down and mouth searches are consistent with MDC's policy that all inmates be searched whenever they move to a different location within the jail facility. In the absence of in-person visitation, the defendant has not been strip searched. If the defendant receives in-person visits, then she, like all other inmates, will be strip searched after any in-person visit.

In addition, MDC staff search the defendant's cell for contraband once per day. At night, MDC staff are required to confirm every fifteen minutes that the defendant is not in distress. To do so, every fifteen minutes, staff point a flashlight to the concrete ceiling of the defendant's cell to illuminate the cell sufficiently to confirm that the defendant is breathing. At night, MDC staff have observed that the defendant wears an eye mask when she sleeps, limiting the disturbance caused by the flashlight. Additionally, MDC staff have observed that the defendant regularly sleeps through these nighttime wellness checks. The MDC continues to be of the view that all of these searches are necessary for the safety of the institution and the defendant.

The Government also inquired regarding certain complaints defense counsel raised in February 2021 regarding the defendant's food, water, and physical wellbeing. In response, MDC

[2] Following defense counsel's complaint in its February 16, 2021 letter of an inappropriately conducted pat-down search, the MDC conducted an investigation and found that, contrary to the defendant's claim, the search in question was in fact recorded in full by a handheld camera. After reviewing the camera footage, the MDC concluded that the search was conducted appropriately and the defendant's complaint about that incident was unfounded. MDC legal counsel further confirmed that all pat-down searches of the defendant are video recorded. Following this incident, MDC staff directed the defendant to clean her cell because it had become very dirty. Among other things, MDC staff noted that the defendant frequently did not flush her toilet after using it, which caused the cell to smell. In addition, the defendant had not cleaned her cell in some time, causing the cell to become increasingly dirty. MDC staff directed the defendant to clean her cell in response to the smell and the dirtiness, not as retaliation for complaining about a particular search.

legal counsel informed the Government that the defendant's meals arrive in containers that are both microwavable and oven safe. Currently, the defendant's meals are heated in a thermal oven. The tap water available in the MDC is provided by New York City. As a result, on occasions when the City has conducted maintenance near the MDC, the water has been temporarily shut off. During those periods, MDC staff have provided all inmates, including the defendant, with bottled water. After the water is turned back on, the water is sometimes cloudy or brown and needs to run for several seconds before becoming clear. MDC staff have not observed any instance in which the water in the defendant's cell did not clear after being run for several seconds. MDC legal counsel emphasized that MDC staff, including the legal staff, drink the same tap water from the same water system as the defendant while in the institution.

MDC medical staff monitor the defendant daily and weigh the defendant at least once per week. During her time at the MDC, the defendant's weight has fluctuated between the 130s and the 140s. The defendant's lowest observed weight was 133 pounds in July of 2021. Since then, her weight has fluctuated but has never been lower than 134 pounds. Most recently, when the defendant was weighed last week, her weight was 137.5 pounds. The defendant is 5' 7", meaning that even her lowest weight of 133 pounds resulted in a BMI of 20.8, which is considered a normal weight for a person of the defendant's height. MDC staff have not observed the defendant experience any noticeable hair loss. As noted above, the defendant has received a COVID-19 vaccine and is now fully vaccinated. In short, MDC medical staff assess that the defendant is physically healthy.

Should the Court have any questions or require any additional details regarding this topic, the Government will promptly provide additional information.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney

By: _____
Maurene Comey / Alison Moe / Lara Pomerantz
Assistant United States Attorneys
Southern District of New York
Tel: (212) 637-2324

Cc: All Counsel of Record (By ECF)

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of April, two thousand twenty one,

---

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

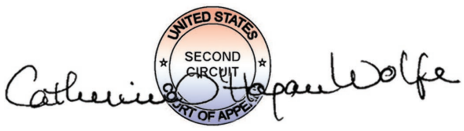
Defendant - Appellant.

ORDER
Docket Nos. 21-58 (L)
21-770 (Con)

Appellee moves for leave to file a supporting exhibit under seal in opposition to the appellant's motion for bail.

IT IS HEREBY ORDERED that the motion is GRANTED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court



21-58 – (L)

21-770 (con)

United States of America v. Maxwell

SEALED SUPPORTING EXHIBIT

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 21-770/21-58 Caption [use short title] United States of America v. Ghislaine Maxwell

Motion for: Motion to withdraw as appellate counsel

Set forth below precise, complete statement of relief sought:

Motion to relieve Christian R. Everdell and Cohen & Gresser LLP as counsel of record because client has retained David Oscar Markus of Markus/Moss PLLC for the appeal.

MOVING PARTY: Ghislaine Maxwell **OPPOSING PARTY:** United States

- ☐ Plaintiff ☐ Defendant
- ☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Christian R. Everdell **OPPOSING ATTORNEY:** Maurene Comey, Asst. U.S. Attorney

[name of attorney, with firm, address, phone number and e-mail]

800 Third Avenue
New York, NY 10022
(212) 957-7268 ceverdell@cohengresser.com

1 St. Andrew's Plaza
New York, NY 10007
(212) 637-2324 maurene.comey@usdoj.gov

Court- Judge/ Agency appealed from: S.D.N.Y./ Hon. Alison J. Nathan

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☑ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☑ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

Has this request for relief been made below? ☐ Yes ☐ No
Has this relief been previously sought in this court? ☐ Yes ☐ No
Requested return date and explanation of emergency:

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:

/s/ Christian R. Everdell **Date:** April 15, 2021 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA *Appellee*, – v. – GHISLAINE MAXWELL, *Defendant-Appellant*.	No. 21-770/21-58 **AFFIRMATION OF CHRISTIAN R. EVERDELL IN SUPPORT OF MOTION TO BE RELIEVED AS COUNSEL**

CHRISTIAN R. EVERDELL, an attorney admitted to practice before this Court hereby affirms under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am a partner at COHEN & GRESSER LLP (Cohen & Gresser) and I am currently one of the counsel of record for Ghislaine Maxwell, the defendant-appellant, in the above-captioned appeals.

2. Pursuant to 2d Cir. L.R.4.1(d) and Fed. R. App. P. 27, I respectfully submit this affirmation in support of the present Motion to be relieved as counsel for Ms. Maxwell in these appeals.

3. We are aware that Ms. Maxwell has retained David Oscar Markus, of the law firm of Markus/Moss PLLC, to represent her in these appeals.

4. On April 1, 2021, Mr. Markus filed a Notice of Appearance as additional counsel on behalf of Ms. Maxwell in these appeals and filed a motion for pretrial release on her behalf.

5. Given that Ms. Maxwell (a) has relieved Cohen & Gresser as counsel on these appeals, and (b) is currently represented in these appeals by Mr. Markus, I respectfully request to be relieved as counsel for Ms. Maxwell in these appeals.

6. Maurene Comey, Assistant United States Attorney, has informed me that the Government does not oppose this motion.

Dated: New York, NY
April 15, 2021

Respectfully submitted,

COHEN & GRESSER LLP

By: */s/ Christian R. Everdell*

Christian Everdell
ceverdell@cohengresser.com
800 Third Avenue, 21st Floor
New York, NY 10022
Phone: (212) 957-7600
Fax: (212) 957-4514

Attorneys for Ghislaine Maxwell

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA *Appellee*, – v. – GHISLAINE MAXWELL, *Defendant-Appellant*.	No. 21-770/21-58 **CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

I certify that, on April 15, 2021, I caused a copy of the foregoing Notice of Motion and Affirmation to be served by this Court's electronic filing system on:

Maurene Comey
Assistant United States Attorney
1 St. Andrew's Plaza
New York, NY 10007
Maurene.Comey@usdoj.gov

Lara Pomerantz
Assistant United States Attorney
1 St. Andrew's Plaza
New York, NY 10007
Lara.Pomerantz@usdoj.gov

Thomas McKay
Assistant United States Attorney
1 St. Andrew's Plaza
New York, NY 10007
Thomas.McKay@usdoj.gov

Won Shin
Assistant United States Attorney
1 St. Andrew's Plaza
New York, NY 10007
Won.Shin@usdoj.gov

David Oscar Markus
Markus/Moss PLLC
40 NW Third Street, PH 1
Miami, FL 33128
dmarkus@markuslaw.com

I further certify that, on April 15, 2021, I caused a copy of the foregoing Notice of Motion and Affirmation to be served by First Class Mail on:

Ghislaine Maxwell
Reg. No. 02879-509
Metropolitan Detention Center
80 29th Street
Brooklyn, NY 11232

COHEN & GRESSER LLP

By: */s/ Christian R. Everdell*

Christian Everdell
ceverdell@cohengresser.com
800 Third Avenue, 21st Floor
New York, NY 10022
Phone: (212) 957-7600
Fax: (212) 957-4514

Attorneys for Ghislaine Maxwell

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States v. Maxwell Docket No.: 21-58(L), 21-770(CON)

Substitute, Additional, or Amicus Counsel's Contact Information is as follows:

Name: Alison Moe

Firm: United States Attorney's Office for the Southern District of New York

Address: One St. Andrew's Plaza

Telephone: (212) 637-2225 Fax: _____

E-mail: alison.moe@usdoj.gov

Appearance for: United States of America/Appellee
(party/designation)

Select One:

☐ Substitute counsel (replacing lead counsel: _____)
(name/firm)

☐ Substitute counsel (replacing other counsel: _____)
(name/firm)

☑ Additional counsel (co-counsel with: Won S. Shin/U.S. Attorney's Office for the Southern District of New York)
(name/firm)

☐ Amicus (in support of : _____)
(party/designation)

CERTIFICATION

I certify that:

☑ I am admitted to practice in this Court and, if required by Interim Local Rule 46.1(a)(2), have renewed my admission on N/A OR

☐ I applied for admission on _____.

Signature of Counsel: /s/ Alison Moe

Type or Print Name: Alison Moe

No. 21-770 & 21-58

In the

United States Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

v.

GHISLAINE MAXWELL,

Appellant.

On Appeal from the United States District Court
for the Southern District of New York, 20-CR-330 (AJN)

Appellant Ghislaine Maxwell's Reply in Support of Her Motion for Pretrial Release

---

David Oscar Markus
MARKUS/MOSS PLLC
40 N.W. Third Street
Penthouse One
Miami, Florida 33128
Tel: (305) 379-6667
markuslaw.com

Appellant Ghislaine Maxwell's Reply in Support of Her Motion for Pretrial Release

The Government's Response underscores why this Court should order bail for Ghislaine Maxwell so that she can prepare for trial. The court below erred in accepting the Government's conclusory proffer without any actual evidence. And the conditions of her confinement make it impossible for her to effectively prepare her defense. The Government concedes that Ms. Maxwell is not a danger to the community, and her proposed bail package demonstrates that she is not a risk of flight. Accordingly, she should be released on bail.

At the very least, this matter should be remanded to the district court to conduct a real bail hearing to (1) test the actual strength of the Government's case, and (2) determine whether Ms. Maxwell should be granted temporary release so that she can effectively prepare for trial, which she cannot do under the current conditions of confinement.

Relying almost entirely on a regurgitation of quotations from the lower court (the first 26 of the 43-paragraph pleading is labeled "Facts"), only ten paragraphs, labeled "Discussion," even attempt to address Ms. Maxwell's arguments. As much as the Government would prefer that Ms. Maxwell not have a fair fight, this Court must level the playing field so

that the presumption of innocence is more than mere words on a page. This Reply responds to the arguments the Government does raise:

1. The Court did not conduct a "lengthy bail hearing." Resp.¶2. The transcript of the video arraignment and bail hearing spans only 91 pages, with the bail arguments on pages 22-79. The Government did not present any actual evidence at this brief hearing. Br.7-8,19-21. During the bail hearing, each time the Government mentioned the strength of its case, it cited to the Indictment. *See, e.g.*, Ex.D, p.24 ("Turning first to the ... strength of the evidence, the indictment in this case arises ... . The indictment further charges that ..."); pg. 25 ("The indictment makes plain ... it was an ongoing scheme ... Given the strength of the government's evidence ... there is an incredibly strong incentive for the defendant to flee ..."). The court erred in agreeing that the Indictment itself demonstrates strength. *Id.* at 82 ("[I]t is appropriate to consider the strength of the evidence proffered by the government in assessing risk of flight. The government's evidence at this early juncture of the case appears strong. Although the charged conduct took place many years ago, the indictment describes ..."). At no point did the Government introduce or even proffer any actual evidence.

The Government makes much of the fact that its Indictment is "speaking." But speaking or not, an indictment is not a substitute for evidence and cannot be used as proof that the case is strong. If that were true, then every single case would be strong because in every case there is an indictment.

2. Similarly, the "additional charges" do not "strengthen the evidence against Maxwell" and do not "further support Judge Nathan's detention orders." Resp.¶6, n.2. The new charges are allegations, nothing more. Piling allegation on allegation and then calling it proof does not make it so. Allegations are not evidence. Moreover, these charges will require Ms. Maxwell to spend more time with her lawyers, not less, and further illustrate why bail is necessary.[1]

3. Contrary to the Government's assertion, "[e]ach witness's testimony" is not "corroborated by that of other victim-witnesses." Resp.¶9. The Government continues to press the false point that the mere number of accusers provides corroboration for the accusers. To the

[1]The defense has been forced to asked for a continuance of the July trial because of the expansion of the conspiracy time period. Ex.O. If the trial is delayed and Ms. Maxwell is not released on bail, she will be further prejudiced with the inhumane conditions of confinement and the inability to aid her defense.

contrary. Not a single on of the anonymous accusers saw or heard what purportedly happened to the other accusers. Not a single one of the anonymous accusers will be able to corroborate the 25-year old stories of the other accusers. Indeed, their stories are contradictory, not corroborating. At a real hearing, the defense will demonstrate that each of the witness' stories has dramatically changed over the years. At first, none of the anonymous accusers even mentioned Ms. Maxwell. As they hired the same law firm, sought money and fame, joined a movement, and only after Epstein died, did the accusers start to point the finger at Ms. Maxwell. Far from corroboration, this is fabrication. The district judge erred in relying on the Indictment as proof that the Government's case is strong.

4. Because there was no meaningful proffer, the Government's reliance on *United States v. LaFontaine*, 210 F.3d 125, 131 (2d Cir. 2000) and *United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986), is misplaced. Resp.¶34. In fact, those cases highlight the court's error. In *LaFontaine*, for example, the bail revocation hearing lasted three days where the government's proffer included providing tape recordings, transcripts, and an affidavit for the court. No such evidentiary proffer

occurred here. The *LaFontaine* Court explained that "while the informality of bail hearings serves the demands of speed, the … district judge must also ensure the reliability of the evidence, 'by selectively insisting upon the production of the underlying evidence of evidentiary sources where their accuracy is in question.'" *Id.* at 131 (quoting *Martir*, 782 F.2d at 1147). And in *Martir*, this Court recognized the "high stakes" involved in a detention hearing and explained that the power afforded to the lower courts "should always be exercised 'with the recognition that a pretrial detention hearing may restrict for a significant time the liberty of a presumably innocent person.'" 782 F.2d at 1145 (internal citations omitted). It then criticized the government's proffer as stating in "the most general and conclusory terms what it hoped to provide," for failing to submit any "independent evidence, such as tapes, documents, or photographs," and for failing to furnish any testimony or affidavits. *Id.* at 1147. Sounds familiar. Unlike *Martir*, where this Court found that it could not reverse because the defense "did not challenge the proffer in any way," Ms. Maxwell absolutely challenged the flimsy proffer from the initial bail hearing through three renewals. Instead of properly putting the Government to the test, the court blindly, uncritically, and

erroneously adopted its conclusory proffer.

5. Ms. Maxwell's intention to evade the media does not even marginally amount to risk of flight. Resp.¶33. The Government does not dispute that the media placed a bounty on Ms. Maxwell or that she was being stalked by them before her arrest. Of course she took measures to protect herself and her family, just as government lawyers and judges do when their safety is at issue. Ms. Maxwell was at her home in the United States. The Government admits that it knew where she was. It had such confidence that it could arrest her whenever it chose that it orchestrated her arrest to coincide with a press conference replete with incendiary demonstrative aids. And it is worth repeating that the Government does not claim that Ms. Maxwell – a 59-year old woman with no prior criminal history – is a danger to the community. She is no monster, but she is being treated like one because of the "Epstein effect."

6. The Government's contention that Ms. Maxwell receives more time than other inmates at MDC to "review her discovery" and "communicate with her attorneys" does not prove anything about whether she is actually able to effectively prepare her defense. Ms. Maxwell needs more time with her lawyers and discovery than almost any other MDC

inmate, few of which are preparing for trial. Over 97% of criminal defendants plead guilty and, therefore, need far less time with their lawyers. Of the remaining 3% who do proceed to trial, the vast majority are out on bond. For those few in custody, how many involve anonymous accusations that are decades old and 2.7 million pages?[2] And how often is such a defendant forced to prepare her case during a pandemic where in-person lawyer visits are unsafe and impractical? It is no wonder that courts around the country are ordering temporary release under § 3142(i) for the few defendants who are trying to prepare for trial during the pandemic.

The Government's weak response is that Ms. Maxwell only mentioned temporary release at the first bail hearing. The Government suggests waiver, without saying it. Nonsense. Ms. Maxwell has repeatedly pressed her inability to effectively prepare her defense, which is properly

[2]To illustrate, for Ms. Maxwell to review the 2.7 million pages, she would have to do it, page by page, on a computer screen. If she spent only 1 minute per page, it would take 45,000 hours or 3,750 days (at 12 hours a day), without taking any notes, without discussing a single page with her lawyers, and not including the discovery that is on the way. Although the Government labels this new discovery "non-testifying witness discovery," it really is *Brady* material which severely undermines the already weak case.

before this Court.

7. Ms. Maxwell is not suggesting that "any defendant in a case with voluminous discovery must be released on bail to prepare for trial." Resp.¶40. Her case and situation is unique. Other defendants may pose a danger to the community. The Government concedes that she does not. Other defendants may not be U.S. citizens. She is. Other defendants may not have strong U.S. connections. Ms. Maxwell has lived here for 30 years, has a husband and step-children here, and has two sisters who are U.S. citizens and live here. Other defendants may not have pledged almost all of their assets or offer to have a monitor track her expenses. Ms. Maxwell has. Other defendants may not be willing to renounce their foreign citizenship. She is. Other defendants may have prior convictions. She does not. But other defendants have no connection to Jeffrey Epstein, and she does. Although unstated, that old connection is the driving factor for detention, and that is error.

8. The Government says that the district judge has "closely monitored" her conditions of confinement. Unfortunately, that is not accurate. The District Court accepted, without any real inquiry, the self-serving Government letters. These letters describe a "prison

paradise," not one of the most notorious prisons in America. A "day room." Two computers. Recreation. Eye masks. But the Government's description of Ms. Maxwell's conditions is not true. For example, she has no eye mask. The guards flash lights in her cell every 15 minutes *for no reason* so she tries as best as she can to shield her eyes with a towel that is not secured and not effective against the unwelcome beams. Even the Government does not dispute that Ms. Maxwell is in de facto solitary confinement. It does not dispute that she has no surface to write on in her isolation cell. It does not dispute that there is often cloudy, obviously unsanitary, water in the jail. It does not dispute that she is being forced to prepare for this trial with a computer that cannot do research and cannot search documents. Attached as Exhibit P, is a response to the latest Government letter, which outlines her actual conditions. It is inconceivable that the government lawyers or its witnesses could prepare for trial under these conditions.

It is painfully apparent that the two sides are far apart on how Ms. Maxwell is being treated. The Government's letters, however, are based on multiple layers of hearsay – prison guards to the prison lawyer to the prosecutor, which get summarized in an unsworn letter to the court. No

affidavits at all, let along from anyone with actual knowledge, were submitted to the court. And the judge has never had an evidentiary hearing about the conditions.

In its most recent letter, the Government contends that Ms. Maxwell's allegation of abuse by the prison guards is unfounded because the Bureau of Prisons has reviewed a video of the incident and has concluded that there is no abuse. This self-serving proclamation is no substitute for evidence. The prosecutors who filed the letter do not even claim to have watched the video. The Government should produce it for the court and defense to review. The court should conduct a hearing to determine what actually happened. The Government professes to believe women, but only when those women are on their side, despite their inconsistent and self-contradictory statements about old, uncorroborated allegations. When it is Ms. Maxwell who has been abused, the Government wants to believe only the abusers who say they did no such thing and without watching the actual video. It seems like the only rule is to get Ms. Maxwell at all costs. And it seems that a conviction is not even enough for the Government – it wants to go so far as to humiliate Ms. Maxwell with false statements about the cleanliness of her cell. *See*

Gov'tEx. (April 6, 2021 letter, n.2). But as Ms. Maxwell explained, the Government's narrative is total fiction – the unsanitary conditions are caused by other inmates and guards, not Ms. Maxwell.

9. The Government also makes much of Ms. Maxwell's vaccination. Again this demonstrates a gross double standard. Imagine if the defense had publicly filed medical information about the accusers. There would be hell to pay. The Government insists on secrecy and redactions when discussing their witnesses, and will not even reveal their names. Yet it freely discloses private information in violation of HIPAA about Ms. Maxwell in public filings.

In any event, whether Ms. Maxwell is vaccinated or not does not help her search documents on an ancient computer or give her access to a printer or allow her to meet with her lawyers (who would still need to come into the jail and interact with numerous other prisoners and guards who have not been vaccinated). Ms. Maxwell's bail motion is not based on her risk of contracting COVID. Her vaccination status is irrelevant.

CONCLUSION

Ms. Maxwell should be released. The allegations against her are weak, she is not a risk of flight, and her appearance at trial is assured by an unprecedented bail package. In the meantime, she cannot effectively prepare for trial under these truly appalling conditions.

The Government's tactic in this appeal, and in the court below, is transparent – it is "trust us." Trust our proffer on the evidence because we indicted her (and this case relates to Jeffrey Epstein). Trust us when we say her conditions are fine because the Bureau of Prisons says they are fine (and we can't have another Jeffrey Epstein situation). The court below clearly erred, however, in just trusting the Government without any actual evidence and without a real hearing, notwithstanding Jeffrey Epstein. As much as the Government would like this case to be the Jeffrey Epstein show, Ghislaine Maxwell is not Jeffrey Epstein.

Ms. Maxwell understands that she and the Government are not going to agree on the facts. This is an adversary system, of course. But in that circumstance, there must be an adversarial hearing where Ms. Maxwell can demonstrate that the Government's case – based on old, anonymous accusations – is weak. There must be an adversarial hearing

where she can demonstrate that her conditions of confinement make preparing for trial impossible. There must be an adversarial hearing where she can challenge any contrary evidence. At the very least, this matter should be remanded to the trial court to conduct such proceedings.

Respectfully submitted,

MARKUS/MOSS PLLC
40 N.W. Third Street
Penthouse One
Miami, Florida 33128
Tel: (305) 379-6667
Fax: (305) 379-6668
markuslaw.com

By: /s/ David Oscar Markus
DAVID OSCAR MARKUS
Florida Bar Number 119318
dmarkus@markuslaw.com

CERTIFICATE OF COMPLIANCE

I CERTIFY that this petition complies with the type-volume limitation of FED. R. APP. P. 27. According to Microsoft Word, the numbered pages of this petition contains 2600 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(d)(2).

This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 27 because it has been prepared in a proportionally spaced typeface using WordPerfect in Century Schoolbook 14-point font.

/s/ David Oscar Markus
David Oscar Markus

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was e-filed this 19th day of April, 2021.

/s/ David Oscar Markus
David Oscar Markus

EXHIBIT O

LAW OFFICES OF BOBBI C. STERNHEIM

212-243-1100 • Main
917-306-6666 • Cell
888-587-4737 • Fax

33 West 19th Street - 4th Floor
New York, New York 10011
bc@sternheimlaw.com

April 15, 2021

Honorable Alison J. Nathan
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *United States v. Ghislaine Maxwell*
S2 20 Cr. 330 (AJN)

Dear Judge Nathan:

We write in reply to the government's April 9th letter opposing a trial continuance. The defense has been steadfastly and diligently preparing for a July 12th trial based on the original indictment, a date set on the condition that there would be no superseding indictment adding substantive charges. The recently filed superseding indictment directly contravenes that agreement and adds two new charges which vastly expand the relevant time period from a four-year period in the 1990s to an eleven-year period stretching from 1994 to 2004. These additions significantly alter the scope of the government's case and necessarily shift the focus of the defense's trial preparation. Instead of being focused on mounting a defense to the allegations of the three accusers from the 1990s, as we have been doing, the defense will now have to spend considerable time and resources investigating allegations of new conduct in a completely different time period involving numerous additional witnesses, and with all of the difficulties that COVID restrictions still place on a meaningful defense investigation.

We do not want to postpone the trial but have no choice but to ask for a continuance. The government bears responsibility for this need, having filed a late-breaking superseding indictment based on a witness who has been known to the government since the Florida

investigation in 2007 (*see* Dkt. 199 at 1-2), long before commencing this prosecution against Ms. Maxwell. We cannot adequately prepare for a trial containing the new charges and a substantially expanded conspiracy in the less than three months remaining.

Government Opposition to a Continuance Is Unreasonable

The government implies that the assumptions underlying the July 12 trial date are irrelevant because it represented, as it always does, that its investigation was "ongoing." But "ongoing investigation" does not imply superseding the indictment to enlarge the originally charged conspiracy from four to eleven years and adding two new distinct charges based on distinct alleged conduct that purportedly took place outside the time period of the original charges. This is not a situation where the government's "ongoing investigation" has yielded, for example, a new overt act to an existing conspiracy. The government has effectively added a brand new case on top of the existing case. This is a significant expansion of the case against Ms. Maxwell that requires considerable time for the defense to investigate and prepare. Indeed, by its own admission, the government needed more than two months after its January 2020 interview of Accuser-4 to properly investigate her allegations and obtain the second superseding indictment. Yet, the government confidently contends that the defense will not need any additional time to prepare to defend against this revised prosecution. The government's double-standard approach is simply wrong. The defense is entitled to conduct a meaningful defense investigation and must have adequate time to do so.

The government's recent production of 3500 material for non-testifying witnesses underscores the significant amount of time that the defense will need to investigate. On April 13, 2021, in a highly unusual, if not unprecedented disclosure, the government produced over 20,000 pages of interview notes, reports and other materials related to 226 separate witnesses whom the government does not intend to call as witnesses at trial. Ms. Maxwell has not yet received these

materials in the MDC. Although defense counsel have not yet been able to fully review the materials, which are voluminous, it is apparent that the witness interviews contain exculpatory or otherwise favorable information for Ms. Maxwell, which the defense has an obligation to investigate. A number of these witnesses may testify as part of the defense case. Even if defense counsel were to attempt to contact and interview only a small number of these witnesses and conduct any necessary follow-up investigation, that would still take a significant amount of time to complete. Thus, while we appreciate receiving these materials, the disclosure has not decreased the amount of time the defense will need to investigate; indeed, it has increased it.

It is also disingenuous for the government to argue that because it previously provided discovery regarding the new charges no additional time is required to prepare the defense of the new indictment. When the parties were originally negotiating a discovery schedule for the original indictment, the government represented that it would be providing, in an abundance of caution, a significant amount of discovery from Epstein's seized electronic devices that contained information that it was not relying on in Ms. Maxwell's case. The government reiterated this point in its November 6, 2020 letter to the Court requesting additional time to finish producing discovery. (*See* Dkt. 69 at 4 ("[O]f the approximately 1.2 million documents, only a handful were specifically relied upon by the Government in the investigation that led the charges in the current indictment."). These devices contain over 2.4 million pages of material, virtually none of which pertained to the time period of the original indictment. Now that the superseding indictment has expanded the time period of the alleged conduct well into the 2000s, the 2.4 million pages that were not previously relevant are now pertinent, requiring re-review and analysis.[1]

[1] The actual number of pages is, in fact, larger than 2.4 million. For example, the discovery from these devices included forensic Cellebrite images of several individual devices that were assigned a single Bates number.

The defense has tried to streamline its review of the discovery even before the filing of superseding indictment by using term searches and key word searches. But given the nature of the discovery, there are meaningful limits to what the defense can do to limit the number of documents it must re-review in light of the new charges. For example, the discovery contains approximately 214,000 photographs, hundreds of hours of audio-visual files, and over 250,000 documents where the text is too poor to be OCR-searchable. Those materials are not susceptible to text searching and must be reviewed individually. Moreover, they must be reviewed with Ms. Maxwell to see if she recognizes the people in the photographs and videos. In light of the new charges and the addition of Accuser-4, these must be re-reviewed, which will take weeks.

We have already experienced the difficulties of reviewing photographs with Ms. Maxwell. Over the past three days, defense counsel have been conducting an evidence view with Ms. Maxwell. As part of that review, we have tried to use an FBI-supplied laptop and hard drive to review approximately 2,100 "Highly Confidential" photographs that were not produced to us in discovery. Because of technical issues with the laptop, we still have not completed the review.

The re-review of the discovery will not be limited to the materials on the seized devices. The discovery also includes numerous bank records and phone records that date from the 2000s and later. None of these records were from the 1990s and were therefore largely irrelevant to the charged crimes. However, with the expansion of the charges to include the time period of the 2000s, the defense will need to carefully analyze these records for relevant payments and phone calls, which will, again, take a significant amount of time.

The government also attempts to justify its delay in seeking the superseding indictment due to the investigative challenges posed by COVID. The government has been investigating for

---

The forensic images contain thousands of individual documents.

years and elected to commence prosecution of Ms. Maxwell in the throes of the pandemic. *All* counsel have been laboring under the difficulties caused by this unprecedented circumstance. The government's challenges pale in comparison to those experienced by the defense. Defending quarter-century-old allegations has required investigation across this country and around the world. Investigating the new allegations will require the same efforts and diligence. It is laughable for the government to use COVID as an excuse for its delay in superseding the indictment and then oppose any continuance for the defense. Defense preparation is not immune to the impact of the pandemic.

A Trial Continuance is Necessary

While the government's offer to provide discovery highlights and its representation that it will streamline its case to primarily focus on the four accusers are helpful, these gestures do not eliminate the need for a continuance. As set forth above, the government's hyperbolic claim that it can "ensure that the defense will be fully prepared to proceed to trial on July 12, 2021" (Govt ltr at 4-5) ignores the reality that time is needed to:

- supplement pending pretrial motions;
- critically review voluminous discovery produced in November 2020 that the government represented was not relevant to the case against Ms. Maxwell;
- re-review discovery for the new time period and charges;
- commence new investigations based on the new charges and the government's disclosure of 3500 material for non-testifying witnesses; and
- refocus trial preparation and strategy.

The government originally represented to the Court and counsel that this trial would last two weeks. The government now predicts the trial will last a month. The estimates are mere guesses which do not factor in time-consuming COVID jury selection in a high-publicity case necessitating sensitive and personal disclosures by prospective jurors or the presentation of defense evidence. In the absence of disclosure of the number and identity of government trial

witnesses, including potential FRE 404(b) witnesses, and trial exhibits, the government's speculation about the length of the trial is entirely one-sided and lacking in any reliable estimate of a defense case. The government's April 12th disclosure of information and statements regarding 226 witnesses containing exculpatory information requires intensive investigation. The delayed expansion of its prosecution and its unilateral expansion of the length of trial severely impacts defense preparation, trial readiness, and conflicts with other trial commitments.

To assist the Court and defense counsel in accurately determining the length of trial, Ms. Maxwell requests that the Court order the government to disclose: a list of trial witnesses, its alleged FRE 404(b) evidence, and a list of potential trial exhibits. With this information the Court and the parties will be making decisions based on facts, not speculative promises.

At the barest minimum, we require a 90-day continuance. In reliance on the firm trial date set by the Court at Ms. Maxwell's arraignment on July 14th, 2020, counsel prioritized the July 12, 2021 trial date, clearing and scheduling our calendars to avoid interference. Counsel have other clients and firm commitments to try cases specifically scheduled to follow the summer trial of this case. These commitments make us unavailable from September through December, and possibly spill over into January, make trying this case unlikely, if not impossible, before mid-January. We are extremely hard pressed to request any continuance, especially one which will prolong Ms. Maxwell's miserable and punishing detention, but the need for time to properly prepare Ms. Maxwell's defense as a result of the additional charges requires us to do so, causing Ms. Maxwell to reluctantly agree to this request.

In addition, motion hearings, in limine motion practice, and any litigation regarding expert witnesses have not yet commenced, and issues regarding jury selection, including but not limited to a jury questionnaire, have not yet been settled. Yesterday, we met with the

government in person to confer on a briefing schedule for supplemental pretrial motions, as well as other deadlines, which we are prepared to discuss with the Court at the arraignment.

The government's revised trial estimate from two to four weeks remains unrealistic and does not include jury selection, which will take longer than usual in this media-saturated case. We oppose advancing jury selection beyond early distribution of questionnaires to prospective jurors. Even if the case were tried on the previous indictment on July 12th, carving off any time required for trial preparation is unwarranted and unfair.

A continuance is justified based on the second superseding indictment. The new charges up the ante and double Ms. Maxwell's sentencing exposure. To deny her a continuance undercuts her constitutional right to a fair trial and effective assistance of counsel. A continuance - the need for which is caused solely by the government - is reasonable and necessary in defense of Ms. Maxwell. The denial of a continuance risks a miscarriage of justice.

Despite Its Necessity, A Continuance Further Prejudices Ms. Maxwell

A delay of the July 12th trial especially one that accommodates counsel's other trial schedules – has a direct and deleterious impact on Ms. Maxwell as a result of her continued detention, the details of which are well known to the Court. In addition to her prolonged detention, she is the victim on ongoing hostile media reporting which impacts the ability to seat fair and impartial jurors.

On April 26th, Second Circuit will hear oral argument on Ms. Maxwell's bail appeal and may moot any need for a further bail application. Nonetheless, Ms. Maxwell reserves her right to seek a bail hearing depending on the Circuit's decision.

Conclusion

We raise these issues in advance of the arraignment scheduled for April 23rd in support of a trial continuance that is warranted in the interests of justice.

Your consideration is greatly appreciated.

Very truly yours,

Bobbi C. Sternheim
BOBBI C. STERNHEIM

cc: All counsel of record

EXHIBIT P

LAW OFFICES OF BOBBI C. STERNHEIM

212-243-1100 • Main
917-306-6666 • Cell
888-587-4737 • Fax

33 West 19th Street - 4th Floor
New York, New York 10011
bc@sternheimlaw.com

April 7, 2021

Honorable Alison J. Nathan
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *United States v. Ghislaine Maxwell*
S2 20 Cr. 330 (AJN)

Dear Judge Nathan:

The government's letter of April 6th is yet another regurgitation of its previous letters regarding Ms. Maxwell's conditions of confinement. No matter how often the government tries to present Ms. Maxwell's detention as superior to other inmates, it continues to miss the mark. We stand by our previous responses and reiterate that Ms. Maxwell's detention is unwarranted and overly restrictive. It is tantamount to "pay-it-forward" punishment served pretrial.

The government's letter provides the opportunity to flush out the persistent unsanitary conditions at the MDC, which long predate Ms. Maxwell's detention. This past weekend there was a pervasive stench of sewage in Ms. Maxwell's unit necessitating guards to flush pipes by pouring water down open drains in an effort to trap and disperse gaseous emissions. As guards explained to Ms. Maxwell, there are three drains in the day area, and when the plumbing system goes unused, gases escape from the drains and cause the stench. At times the stench in Ms. Maxwell's isolation cell has been overwhelming due to overflowing of toilets in the cellblock above. Due to lack of privacy, Ms. Maxwell refrains from using the toilet in the isolation cell and, as directed by the guards, she flushes frequently to avoid plumbing problems. At times, the stench is apparent upon entering the visiting area. Of the many defense counsel who visit

regularly, I challenge the government to identify anyone that would risk their health by drinking the tap water. Even the guards resort to drinking bottled water.

Blaming Ms. Maxwell for the filth of her severely restricted environment is utterly misplaced. To suggest she willingly lives in squalor is absurd. In an effort to wield power, the guards use cleaning as a punishment. The MDC - especially the East Building where Ms. Maxwell is held– is permeated with mold and vermin. Cockroaches and rodents are plentiful and glue tracks have been placed in Ms. Maxwell's day area to help remediate the problem.

While HEPA filters may improve the safety of the legal visiting rooms – characterized by an HVAC inspector as "a death trap" – in-person visiting with Ms. Maxwell is uncomfortable and unproductive. Relegated to a small "fishbowl" where chairs abut glass walls and a table, with no room in between, Ms. Maxwell and counsel are forced to wedge their bodies into chairs. There is no opportunity to view electronic discovery or exchange documents; and speaking while wearing a face mask while crammed on either side of a plexiglass divider under surveillance of three guards and a handheld camera places a chill on any free exchange of confidential information. While video conferencing has facilitated on-going communication between Ms. Maxwell and counsel, her request for a legal call to confer with counsel regarding pretrial motions was denied.

Ms. Maxwell's health is deteriorating. She has not experienced sunshine and fresh air for the past eight months. Referring to an interior gated pen where Ms. Maxwell can exercise (and be subjected to even more searches) as the "outside" is a misnomer. Barely a breeze permeates that area.

Medical staff monitor Ms. Maxwell's health by recording her weight in her medical chart. Guards declined Ms. Maxwell's request to know her weight, claiming they cannot look it

up because it is part of her medical record, which is protected by the American Health Insurance Portability and Accountability Act Health Information Policy (HIPAA). She is weighed while clothed on scales that are erratic and not set to zero; on at least one occasion, the scale was set above five pounds. Her eyesight is failing, and her hair is thinning. The guards are far from qualified to assess Ms. Maxwell's physical condition.

Releasing any inmate's medical information (i.e., weight, vaccinations, etc.) without inmate consent is a HIPAA violation. By releasing such information regarding Ms. Maxwell, the MDC has violated HIPAA, a privacy breach compounded by the government's letter. Requesting medical attention puts Ms. Maxwell's privacy and HIPAA rights at risk. We request that the Court order the MDC to cease releasing Ms. Maxwell's health information. Breach aside, such information falls within the "caution" category identified in Your Honor's Individual Practice in Criminal Cases (*see* 8D (Redactions)). The government, ever protective of sensitive items of discovery that relate to the alleged victims, should exhibit the same concern for Ms. Maxwell's right to privacy.

The incident of physical abuse which occurred when Ms. Maxwell was shoved into her isolation cell to be searched was previously reported to MDC Legal and the Court and investigated within the facility. The guard responsible for the abuse is a member of a rotating team that has been the subject of complaint, yet some members were reassigned to Ms. Maxwell for the past two weeks. The incident at issue occurred when Ms. Maxwell was facing forward in front of an officer whose back was in front of the handheld camera. On information and belief, the camera was not recording at that time. The government disputes Ms. Maxwell's claim by citing a video. We request that the Court direct the government to provide defense counsel with that video. In response to any misconduct of guards, the standard reply is that "the matter will be

taken seriously," and just like the majority of complaints filed by inmates, the facility refuses to provide results of this and other inquiries.

The mail and food issues persist. Even a Federal Express envelope from the government was not given to Ms. Maxwell until two weeks after it was sent, containing a discovery disc that was unreadable. In mid-March, she received a copy of the New York Times issued in October. Any claim that Ms. Maxwell deletes CorrLinks emails, which is disputed, does little to erase the fact that the MDC violated its own policy by prematurely deleting Ms. Maxwell's legal emails. That her food is not heated in a thermal oven does little to explain why she was given a salad containing mold earlier this week.

Ms. Maxwell does not have an eye mask; she's not even provided a suitable face mask. She covers her eyes with a towel to shield them from glaring overhead lighting that she cannot turn off and from flashlights pointed into her cell every 15 minutes during the night. That Ms. Maxwell chooses not to respond to guards during the nighttime is no indication that she is engaged in restful sleep; rather, it's a respite from having to engage with them.

No amount of gloss put on Ms. Maxwell's conditions of confinement can erase the fact that she remains in de facto solitary confinement, over-managed by multiple guards, and surveilled by multiple cameras 24 hours per day. The computer equipment provided remains inadequate to review the millions of pages of discovery under circumstances that are not conducive to preparing for trial. It is unreasonable to believe that not being able to search, mark, save, and print is sufficient to prepare this document-laden case for trial. The Court need only imagine how the government would respond if this was a 25-year-old document-driven fraud case.

The Court's request for updates concerning Ms. Maxwell's conditions of confinement does little to improve her situation. Quite the contrary. The government's update letters are anything but helpful: They fuel media attention which resounds to Ms. Maxwell's detriment. The government's attempt to publicly embarrass and humiliate Ms. Maxwell in the hostile court of public opinion further erodes the likelihood that her case will be tried by a fair and impartial jury. The government's review of the MDC may be Yelp-worthy, but it does not justify Ms. Maxwell's inappropriate detention. If the government wants to compare Ms. Maxwell to other defendants, it should do the right thing and consent to bail.

It is debatable whether the public has a "right to know" about Ms. Maxwell's conditions of confinement, but clearly, it does not extend to personal and medical information. The government safeguards personal information regarding its witnesses and is reluctant to release any unless mandated by statute or court order. Yet the government fails to accord Ms. Maxwell the same treatment.

Should the Court request further updates from the government, we request that they be limited to changed circumstances and filed under seal or subject to appropriate redaction.

Very truly yours,

Bobbi C. Sternheim
BOBBI C. STERNHEIM

cc: All counsel

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of April, two thousand twenty-one.

Before: Raymond J. Lohier, Jr.,
Circuit Judge.

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

ORDER

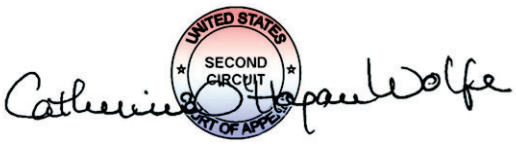
Docket Nos. 21-58(L), 21-770(CON)

Christian R. Everdell moves to be relieved as counsel for Appellant Ghislaine Maxwell in light of Appellant retaining new appellate counsel.

IT IS HEREBY ORDERED that the motion is GRANTED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court



United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: April 27, 2021
Docket #: 21-58cr
Short Title: United States of America v. Maxwell

DC Docket #: 1:20-cr-330-1
DC Court: SDNY (NEW YORK CITY)DC Docket #: 1:20-cr-330-1
DC Court: SDNY (NEW YORK CITY)
DC Judge: Nathan

NOTICE OF CASE MANAGER CHANGE

The case manager assigned to this matter has been changed.

Inquiries regarding this case may be directed to 212-857-8513.

21-58-cr (L), 21-770-cr
United States v. Maxwell

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of April, two thousand twenty-one.

PRESENT: PIERRE N. LEVAL,
RAYMOND J. LOHIER, JR.,
RICHARD J. SULLIVAN,
Circuit Judges.

United States of America,

Appellee,

v.

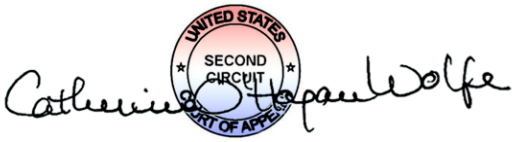
21-58-cr (L)
21-770-cr

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant-Appellant.

Defendant-Appellant Ghislaine Maxwell appeals from orders of the District Court entered December 28, 2020 and March 22, 2021, which denied her renewed requests for bail pending trial. See Dkts. 1, 20. Upon due consideration, it is hereby ORDERED that the District Court's orders are AFFIRMED and that Appellant's motion for bail, or in the alternative, temporary pretrial release pursuant to 18 U.S.C. § 3142(i), Dkt. 39, is DENIED. During oral argument, counsel for Appellant expressed concern that Appellant was improperly being deprived of sleep while incarcerated. To the extent Appellant seeks relief specific to her sleeping conditions, such request should be addressed to the District Court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



21-58-cr (L), 21-770-cr
United States v. Maxwell

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of April, two thousand twenty-one.

PRESENT: PIERRE N. LEVAL,
RAYMOND J. LOHIER, JR.,
RICHARD J. SULLIVAN,
Circuit Judges.

United States of America,

Appellee,

v.

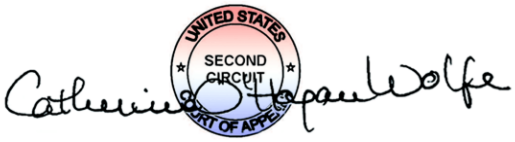
21-58-cr (L)
21-770-cr

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant-Appellant.

Defendant-Appellant Ghislaine Maxwell appeals from orders of the District Court entered December 28, 2020 and March 22, 2021, which denied her renewed requests for bail pending trial. See Dkts. 1, 20. Upon due consideration, it is hereby ORDERED that the District Court's orders are AFFIRMED and that Appellant's motion for bail, or in the alternative, temporary pretrial release pursuant to 18 U.S.C. § 3142(i), Dkt. 39, is DENIED. During oral argument, counsel for Appellant expressed concern that Appellant was improperly being deprived of sleep while incarcerated. To the extent Appellant seeks relief specific to her sleeping conditions, such request should be addressed to the District Court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 21-770/21-58 Caption [use short title] United States of America v. Ghislaine Maxwell

Motion for: Renewed Motion for Pretrial Release

Set forth below precise, complete statement of relief sought:

Ghislaine Maxwell renews her motion for pretrial release or in the alternative, remand for an evidentiary hearing.

MOVING PARTY: Ghislaine Maxwell **OPPOSING PARTY:** United States of America

☐ Plaintiff ☐ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: David Oscar Markus **OPPOSING ATTORNEY:** Lara Pomerantz, AUSA

[name of attorney, with firm, address, phone number and e-mail]

Markus/Moss PLLC
40 NW Third Street, PH 1, Miami, Florida 33128
(305)379-6667; dmarkus@markuslaw.com

United States Attorney's Office, So. Dist. of NY
One Saint Andrew's Plaza, New York, New York 10007
(212)637-2226

Court- Judge/ Agency appealed from: Alison J. Nathan, Southern District of New York

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☑ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

Has this request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested? ☑ Yes ☐ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:

/s/ David Oscar Markus **Date:** 5/17/2021 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

No. 21-770 & 21-58

In the

United States Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

v.

GHISLAINE MAXWELL,

Appellant.

On Appeal from the United States District Court
for the Southern District of New York, 20-CR-330 (AJN)

Appellant Ghislaine Maxwell's Renewed Motion for Pretrial Release

Leah S. Saffian
LAW OFFICES OF LEAH SAFFIAN
15546 Meadowgate Road
Encino, California 91436-3429
Tel: (858)488-2765

David Oscar Markus
**Counsel of Record*
MARKUS/MOSS PLLC
40 N.W. Third Street, PH 1
Miami, Florida 33128
Tel: (305) 379-6667
markuslaw.com

Appellant Ghislaine Maxwell's Renewed Motion for Bond

Although this Court denied Ghislaine Maxwell's motion for bond (*see* Ex. A, Order, April 27, 2021), it appeared concerned with the conditions of her confinement during oral argument and instructed Ms. Maxwell that "[t]o the extent Appellant seeks relief specific to her sleeping conditions, such request should be addressed to the District Court." (*Id.*).

Ms. Maxwell did just that, explaining again to the trial judge the grueling conditions of her confinement, which includes shining a flashlight in Ms. Maxwell's eyes every 15 minutes, over the past 318 days in solitary confinement, even though she is not suicidal and even though no other inmate suffers such abuse. Ex. C, Doc. 256. The government responded, Ex. D, and although it previously intimated that Ms. Maxwell might be suicidal (she's not), it now said that the sleep deprivation was justified because she is housed alone, because of the nature of the charges, and because the case is high-profile. Not one of these reasons makes any sense upon any examination. The government did not provide an affidavit from anyone at the jail or explain why depriving Ms. Maxwell

of sleep would alleviate her stress instead of exacerbate it. Ms. Maxwell replied. Ex. E, Doc. 272.

The district court then issued an order saying that it would not tell the Bureau of Prisons what to do but "admonishe[d] the MDC and the Government to continue to ensure that Maxwell is subjected to only those security protocols that BOP determines are necessary for her safety and security, based upon neutral and applicable factors, and consistent with the treatment of similarly situated pre-trial detainees." Ex. B, Doc. 282.

But Ms. Maxwell is not being treated like any other detainee. And the horrific conditions make it impossible to prepare for trial. Accordingly, we renew our motion for bond and seek relief from this Court. Ms. Maxwell simply wants a fair opportunity to fight the charges against her at trial.

Currently, she (1) can't sleep because the guards wake her every 15 minutes; (2) oftentimes can't drink the water because it is brown and contains particles; (3) can't meet in person with her lawyers because the guards use a handheld camera to video and audio tape record the meetings; (4) can't manage the smell of overflowing sewage that comes up from the drain in her unit; (5) can't keep the guards from seizing and

going through her attorney-client materials; and (6) can't search, print, highlight, or sort the discovery because the "computer" she was given was stripped down and does not have the proper software or hardware capabilities. The truth is that Ms. Maxwell is not being treated in a humane fashion and cannot prepare for trial under these horrific conditions. She has been in solitary confinement with no sleep for almost a year. The presumption of innocence has been turned on its head. This Court should either order her temporary release under 18 U.S.C. 3142(i) or remand this matter and order the trial court to conduct an evidentiary hearing on the conditions of her confinement.

It is important to underscore that the government has made a number of representations to the trial court and to this Court about the conditions of Ms. Maxwell's detention that have proven to be false.

1. Government misrepresentation to the district court: "The defendant wears an eye mask when she sleeps, limiting the disturbance caused by the flashlight [every fifteen minutes]." Doc. 196 (April 6, 2021, gov't letter to district court). But the truth is that she has no "eye mask" and the government has now admitted that eye masks are "contraband" in the jail and that she cannot have one. Doc. 270 (May 5, 2021, gov't

letter to district court) ("MDC legal counsel has informed the government that the defendant cannot be provided with an eye mask."). So Ms. Maxwell tries to shield her eyes with a sock or towel. Trying to sleep with an unsecured sock over your eyes in an attempt to shield yourself from flashlights searches every 15 minutes makes restful sleep impossible.

The above picture shows how Ghislaine Maxwell looked before her arrest in July 2020 (left) and how she looks now after 10 debilitating months of tortuous conditions at MDC Brooklyn where, just as an example, she is not permitted to sleep. Ex. C, Doc. 256.

2. Government misrepresentation to this Court during oral argument when asked if shining lights in Ms. Maxwell's face every fifteen minutes during the night was routine: "My understanding, Your Honor, is that that is a routine; it is routine by BOP officials." But then in a letter to the district court, the government admitted that Ms. Maxwell is the only inmate who receives these targeted flashlight checks every 15 minutes. Doc. 270 ("MDC staff conduct flashlight checks every fifteen minutes [only for Ms. Maxwell] because the defendant, while not on suicide watch, is on an enhanced security schedule.").

In a response that would make Orwell's Ministry of Truth proud, the government tries to spin this and argue that other inmates are also periodically checked throughout the night. Doc. 270 (stating – without an affidavit or other actual sworn testimony – that in general population, checks are usually done about once an hour).

But try as it might, the government cannot escape the bottom line that Ms. Maxwell is the only person who is treated this way and wakened every 15 minutes while in solitary confinement. In fact, the government then tries to justify the treatment by saying – again without support or an affidavit – that even though Ms. Maxwell is not suicidal, she should

be singled out in this way because she is alone, the nature of the charges, and that this is high profile case. But those reasons, individually or collectively, do not justify torturing someone by depriving them of sleep. Nevertheless, the district judge did not conduct a hearing or otherwise question BOP. It simply allowed the government to file a letter saying that this is what was relayed to the government from the jail lawyer from the jail guards. Even if that hearsay was true (which should be questioned based on other representations made by BOP to the government to the court), it is not at all sufficient for this type of treatment.

3. Government misrepresentation to the district court: Ms. Maxwell "caused [her] cell to smell" by not flushing the toilet. Doc. 196, n.2 (April 6, 2021, gov't letter to district court). This claim is absurd, of course, and was again made without any sworn statement. Ms. Maxwell responded and explained that the smell of sewage was caused by the conditions in MDC and not by her.

This was recently corroborated by another MDC inmate, Tiffany Days, who explained to Judge McMahon the sorts of conditions that are present at MDC: "I also survived the disgusting feces flood that we were

actually told to clean with our own hands. It was humiliating. Floating, dead water bugs, mice, chunks of defecation coming out of the pipes and urine-filled water gushing all through the area. The water was as high as my ankles, and the smell was as bad. It was so bad, the inmates were vomiting due to nausea. Chunks of feces. And officers telling us that we had to clean it and clean it quick because lunch was on the way." She continued: "MCC and MDC are the most degrading and humiliating memories of my life. I will hold onto these memories forever, but these memories are my motivation to stay out of trouble, your Honor." *United States v. Tiffany Days*, April 29, 2021, which can be accessed at: https://tinyurl.com/ytf8cyw5. The judge in that case was upset, finding: "it is the finding of this Court that the conditions to which [Tiffany Days] was subjected are as disgusting, inhuman as anything I've heard about in any Colombian prison, but more so because we're supposed to be better than that." *See* transcript of sentencing hearing, *United States v. Tiffany Days*, April 29, 2021, which can be accessed at: https://tinyurl.com/48yw29px.

4. BOP false accusation to the district court concerning Ms. Maxwell's lawyers: "Those [privileged] materials that defense counsel

gave to Ms. Maxwell contrary to MDC Brooklyn's legal visit procedures were confiscated by staff…" Doc. 259. Ms. Maxwell's lawyers showed this was false and that they did not give anything to Ms. Maxwell. Doc. 258. In addition, there was a videotape of the incident. But the government refused to review it and refused to provide it to the court. The defense insisted on having a hearing and that it be provided with the videotape of the attorney-client visit so that it could show that the MDC statements to the government were false. The court declined to have a hearing or order the videotape turned over. The truth is actually out there. We simply want an opportunity to demonstrate it at a hearing.

Ironically, the court then blamed the defense for failing to provide proof of its claims. The defense has, over and over again, requested hearings and that the videotapes of what is occurring in jail be produced. But the district court said that the defense "describes generalized grievances but makes no additional specific and supported application for relief." Doc. 282. This is an odd reason to deny Ms. Maxwell relief, especially where even the government admits that guards flash a light in Ms. Maxwell's cell every 15 minutes and that she is not provided an eye mask. We have said and continue to say that we would like production of

the evidence and a hearing so that we may demonstrate our other claims. These requests have been denied. In any event, the government does not even deny most of the allegations we have made – Ms. Maxwell is being kept up at night, that oftentimes the water is undrinkable, that the food is not delivered or inedible, that her computer cannot perform the necessary tasks to prepare for trial, and so on.

Instead, the government simply says that the district judge is managing Ms. Maxwell's conditions. Again, that is just not true. The district court has made it clear – again in its latest order – that it won't tell BOP what to do, even though BOP has not justified in any way the treatment that Ms. Maxwell is receiving. As we have said from the start, everyone knows the real reason she is being subjected to these abusive tactics: because Jeffrey Epstein died on BOP's watch and it is going to treat Ms. Maxwell as though she is Epstein.

In sentencing another woman who was held at MDC, District Judge Colleen McMahon said the defendant "shouldn't have to suffer for the incompetence of the United States Department of Justice and its subsidiary agency, the Bureau of Prisons. I will do what I can to bring your situation to the people who, if they give a damn, might do

something." *See* transcript of sentencing hearing, *United States v. Tiffany Days*, April 29, 2021, which can be accessed at: https://tinyurl.com/48yw29px.

We are appealing to this Court to do something, as Judge McMahon pleaded. Ghislaine Maxwell has a Constitutional right to be able to prepare effectively for trial. The conditions of her pretrial detention deprive her of that right. For almost a year, she has been held in the equivalent of solitary confinement, in deteriorating health and mental condition from lack of sleep because she is intentionally awakened every 15 minutes by lights shined directly into her small cell, inadequate water and food, the constant glare of neon light, and intrusive searches, including having hands forced into her mouth in a squalid facility where COVID has run rampant.

Ms. Maxwell understands that she and the government are not going to agree on the facts. This is an adversary system, of course. But when the government's representations about the conditions of confinement continue to be demonstrably and admittedly false, there needs to be an intervention. If the Court is not prepared to temporarily release Ms. Maxwell on bond so that she can prepare for trial, it should

order the district court to conduct a hearing on the conditions of her confinement so that the defense can make the appropriate showing.

Respectfully submitted,

LAW OFFICES OF LEAH SAFFIAN
15546 Meadowgate Road
Encino, California 91436-3429
Tel: (858)488-2765

By: /s/ Leah S. Saffian
LEAH S. SAFFIAN
California Bar Number 121796

MARKUS/MOSS PLLC
**Counsel of Record*
40 N.W. Third Street, PH 1
Miami, Florida 33128
Tel: (305) 379-6667
markuslaw.com

By: /s/ David Oscar Markus
DAVID OSCAR MARKUS
Florida Bar Number 19318
dmarkus@markuslaw.com

CERTIFICATE OF COMPLIANCE

I CERTIFY that this petition complies with the type-volume limitation of FED. R. APP. P. 27. According to Microsoft Word, the numbered pages of this petition contains 2,038 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(d)(2).

This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 27 because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point font.

/s/ David Oscar Markus
David Oscar Markus

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was e-filed this 17th day of May, 2021.

/s/ David Oscar Markus
David Oscar Markus

No. 21-770 & 21-58

In the

United States Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

v.

GHISLAINE MAXWELL,

Appellant.

On Appeal from the United States District Court
for the Southern District of New York, 20-CR-330 (AJN)

Appellant Ghislaine Maxwell's Appendix to the Renewed Motion for Pretrial Release

Leah S. Saffian
LAW OFFICES OF LEAH SAFFIAN
15546 Meadowgate Road
Encino, California 91436-3429
Tel: (858)488-2765

David Oscar Markus
**Counsel of Record*
MARKUS/MOSS PLLC
40 N.W. Third Street, PH 1
Miami, Florida 33128
Tel: (305) 379-6667
markuslaw.com

Appendix*

* App. refers to the Appellate docket and Doc. refers to the district docket.

Respectfully submitted,

LAW OFFICES OF LEAH SAFFIAN
15546 Meadowgate Road
Encino, California 91436-3429
Tel: (858)488-2765

By: /s/ Leah S. Saffian
LEAH S. SAFFIAN
California Bar Number 121796

MARKUS/MOSS PLLC
**Counsel of Record*
40 N.W. Third Street, PH 1
Miami, Florida 33128
Tel: (305) 379-6667
markuslaw.com

By: /s/ David Oscar Markus
DAVID OSCAR MARKUS
Florida Bar Number 19318
dmarkus@markuslaw.com

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was e-filed this 17th day of May, 2021.

/s/ David Oscar Markus
David Oscar Markus

Exhibit A

App. 86

Second Circuit Court Order
April 27, 2021

21-58-cr (L), 21-770-cr
United States v. Maxwell

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of April, two thousand twenty-one.

PRESENT: PIERRE N. LEVAL,
RAYMOND J. LOHIER, JR.,
RICHARD J. SULLIVAN,
Circuit Judges.

United States of America,

Appellee,

v. 21-58-cr (L)
21-770-cr

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant-Appellant.

Defendant-Appellant Ghislaine Maxwell appeals from orders of the District Court entered December 28, 2020 and March 22, 2021, which denied her renewed requests for bail pending trial. See Dkts. 1, 20. Upon due consideration, it is hereby ORDERED that the District Court's orders are AFFIRMED and that Appellant's motion for bail, or in the alternative, temporary pretrial release pursuant to 18 U.S.C. § 3142(i), Dkt. 39, is DENIED. During oral argument, counsel for Appellant expressed concern that Appellant was improperly being deprived of sleep while incarcerated. To the extent Appellant seeks relief specific to her sleeping conditions, such request should be addressed to the District Court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

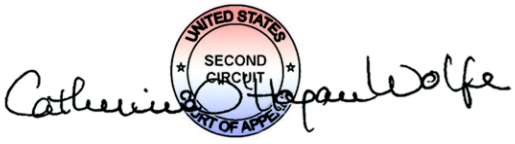


EXHIBIT A

Exhibit B

Doc. 282

Lower Court Order
May 14, 2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

On April 29, 2021, counsel for Ghislaine Maxwell wrote to the Court requesting that the Court address her sleeping conditions, with particular emphasis on counsel's representation, unsupported by affidavit or other factual showing, that guards are shining a flashlight in Maxwell's eyes every 15 minutes at night. Dkt. No. 256. Defense counsel claims that the flashlight surveillance in Maxwell's eyes is disrupting her sleep, which in turn is impacting her ability to prepare for and withstand trial. The Court sought more information by ordering the Government to confer with legal counsel for the Bureau of Prisons and to respond to certain questions. Dkt. No. 257. In response, the Government states that MDC staff conduct flashlight checks of all inmates as a matter of course. Dkt. No. 270. As reported by the Government, inmates housed with cell mates in the Special Housing Unit are checked with flashlights every 30 minutes. Inmates housed with others in the general population are checked multiple times per night at regular intervals. The Government further reports that to conduct the checks, flashlights are pointed at the ceiling of the cell to confirm that the inmate is present, breathing, and not in distress. As the Government explains, there are a number of neutral reasons why BOP's flashlight checks of Maxwell are relatively more frequent than those of other inmates, including that Maxwell is housed alone, the nature of the charges, and the potential stress for inmates that

can arise in high-profile cases. The MDC has determined that these factors necessitate more frequent safety and security checks. The Government also indicates that the prohibition on eye masks is a generally applicable policy, but that Maxwell, like other inmates, may use other non-contraband items to cover her eyes.

To the extent that Maxwell's April 29, 2021 letter asks the Court to override BOP's determination as to the frequency of appropriate safety and security check procedures, that request is denied as factually unsubstantiated and legally unsupported. Certainly nothing in the record plausibly establishes that current protocols interfere with Maxwell's ability to prepare for her trial and communicate with her lawyers. Defense counsel's May 7, 2021 letter, Dkt. No. 272, describes generalized grievances but makes no additional specific and supported application for relief. Nevertheless, the Court urges the MDC to consider whether sleep disruption for pre-trial detainees can be reduced. The Court also admonishes the MDC and the Government to continue to ensure that Maxwell is subjected to only those security protocols that BOP determines are necessary for her safety and security, based upon neutral and applicable factors, and consistent with the treatment of similarly situated pre-trial detainees.

The Government shall provide a copy of this Order to the Warden and General Counsel for the MDC.

SO ORDERED.

Dated: May 14, 2021
New York, New York

ALISON J. NATHAN
United States District Judge

Exhibit C

Doc. 256

Ghislaine Maxwell letter regarding conditions at Metropolitan Detention Center
April 29, 2021

LAW OFFICES OF BOBBI C. STERNHEIM

212-243-1100 • Main
917-306-6666 • Cell
888-587-4737 • Fax

33 West 19th Street - 4th Floor
New York, New York 10011
bc@sternheimlaw.com

April 29, 2021

Honorable Alison J. Nathan
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *United States v. Ghislaine Maxwell*
S2 20 Cr. 330 (AJN)

Dear Judge Nathan:

During oral argument of Ghislaine Maxwell's bail appeal before the Circuit, Ms. Maxwell's appellate counsel expressed concern that she was improperly deprived of sleep while detained in the MDC, an issue that has been raised in filings before this Court. In its brief denial of her appeal, the Circuit stated: "To the extent Appellant seeks relief specific to her sleeping conditions, such request should be addressed to the District Court." *See* Exhibit A. We press our concerns regarding disruption of Ms. Maxwell's sleep and the deleterious effect sleep deprivation is having on her health, well-being, and ability to prepare for and withstand trial.

Ms. Maxwell continues to be disrupted throughout the night by guards shining a flash/strobe light into her cell, claiming that her breathing must be checked. The myth that Ms. Maxwell's conditions of confinement are related to her being a suicide risk was laid to rest during the oral argument: There is nothing to support that contrived claim. In fact, Ms. Maxwell is classified with the standard CC1-Mh designation: inmate with no significant mental health care. (*See* Dkt. 159 at 3.)

Contrary to the report that Ms. Maxwell "wears an eye mask when she sleeps" (Dkt. 196 at 4), an item neither available for purchase through MDC commissary nor provided to her, she resorts to using a sock or towel to cover her eyes in an awkward attempt to shield them from disrupting illumination every 15 minutes. Last night, she was confronted by MDC staff due a visible bruise over her left eye. The "black eye" is depicted in Exhibit B. Despite 24/7 camera surveillance (except when guards elect to exert authority in an intimidating way off-camera, as they did in Saturday's bathroom incident), no guard addressed the bruise until Ms. Maxwell, who has no mirror, caught a reflection of her aching eye in the glean of a nail clipper. At that point, MDC staff confronted Ms. Maxwell regarding the source of the bruise, threatening to place her in the SHU if she did not reveal how she got it. While Ms. Maxwell is unaware of the cause of the bruise, as reported to medical and psych staff, she has grown increasingly reluctant to report information to the guards for fear of retaliation, discipline, and punitive chores. However, there is concern that the bruise may be related to the need for Ms. Maxwell to shield her eyes from the lights projected into her cell throughout the night.

The MDC routinely places inmates in the SHU if they have engaged in physical altercation with other inmates or to protect inmates who are the subject of abuse. It would be ironic if the MDC follows through with its threat to place Ms. Maxwell in the SHU: It would signal that Ms. Maxwell needs protection from the very staff so intent on protecting her, since she has no contact with anyone but staff.

As suggested by the Circuit, we ask the Court to address Ms. Maxwell's sleeping conditions by directing the MDC to cease 15-minute light surveillance of Ms. Maxwell or justify the need for the disruptive flashlight surveillance.

Very truly yours,

Bobbi C. Sternheim

BOBBI C. STERNHEIM

Encs.
cc: All counsel of record

21-58-cr (L), 21-770-cr
United States v. Maxwell

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of April, two thousand twenty-one.

PRESENT: PIERRE N. LEVAL,
RAYMOND J. LOHIER, JR.,
RICHARD J. SULLIVAN,
Circuit Judges.

United States of America,

Appellee,

v.

21-58-cr (L)
21-770-cr

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant-Appellant.

Defendant-Appellant Ghislaine Maxwell appeals from orders of the District Court entered December 28, 2020 and March 22, 2021, which denied her renewed requests for bail pending trial. See Dkts. 1, 20. Upon due consideration, it is hereby ORDERED that the District Court's orders are AFFIRMED and that Appellant's motion for bail, or in the alternative, temporary pretrial release pursuant to 18 U.S.C. § 3142(i), Dkt. 39, is DENIED. During oral argument, counsel for Appellant expressed concern that Appellant was improperly being deprived of sleep while incarcerated. To the extent Appellant seeks relief specific to her sleeping conditions, such request should be addressed to the District Court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

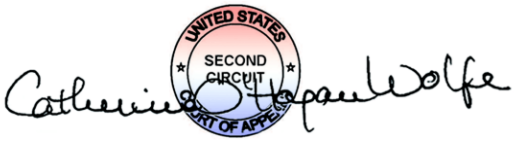


EXHIBIT A

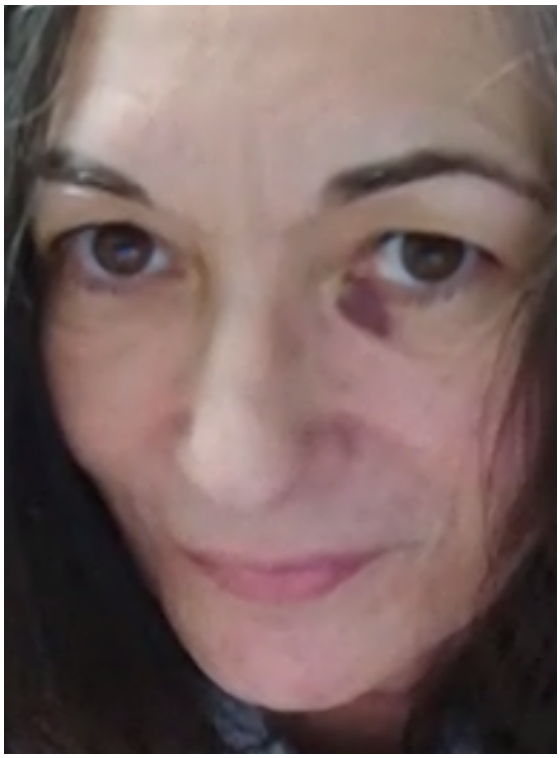


EXHIBIT B

Exhibit D

Doc. 270

Government's Response to Ghislaine Maxwell's conditions
at Metropolitan Detention Center
May 5, 2021

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

May 5, 2021

BY ECF

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Judge Nathan:

The Government respectfully submits this letter in response to the Court's Order dated April 29, 2021, which directed the Government to confer with legal counsel at the Metropolitan Detention Center ("MDC") regarding the use of flashlights in security checks at MDC. (Dkt. No. 257). The Government has conferred with legal counsel at MDC in accordance with the Court's Order, and legal counsel provided the information set forth herein.

MDC staff conduct flashlight checks at night as a matter of course throughout the facility for the safety and security of the inmates at the institution. During these flashlight checks, MDC staff point a flashlight at the ceiling of each cell to illuminate the cell sufficiently to confirm that the inmate is present in the cell, breathing, and not in distress. MDC staff conduct flashlight checks every 30 minutes for inmates housed in the Special Housing Unit (the "SHU") and conduct flashlight checks of inmates in the general population multiple times each night at irregular intervals, but at an average of at least once per hour.

With respect to the defendant, MDC staff conduct flashlight checks every fifteen minutes because the defendant, while not on suicide watch, is on an enhanced security schedule. That is

because MDC has identified a number of factors that raise heightened safety and security concerns with respect to this defendant, including: (1) the nature of the charges, (2) the potential stress for inmates that can arise in high-profile cases, and (3) the need to ensure the defendant's safety while she is incarcerated in a cell by herself—a housing determination made by MDC staff based on various factors, including the defendant's expressed concern for her safety if she were to be housed in the general population.[1]

As to the Court's question whether the defendant can be provided with "appropriate eye covering," MDC legal counsel has informed the Government that the defendant cannot be provided with an eye mask. Eye masks are not available for purchase in commissary and are not issued to inmates and, therefore, are considered contraband. The defendant is permitted, however, to use non-contraband items to cover her eyes at night.

Should the Court have any questions or require any additional details regarding this topic, the Government will promptly confer with legal counsel at MDC and provide additional information.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney

By: s/
Maurene Comey / Alison Moe / Lara Pomerantz
Assistant United States Attorneys
Southern District of New York

Cc: Defense Counsel (By ECF)

[1] The MDC has determined the defendant's current housing assignment based, in part, on her concerns about being housed in the general population and as an alternative to her being housed in the SHU. By contrast, in the SHU, most inmates have a cellmate which provides an additional check should something go wrong or should an inmate need medical attention in the middle of the night.

Exhibit E

Doc. 272

Ghislaine Maxwell's Reply regarding conditions at Metropolitan Detention Center
May 7, 2021

LAW OFFICES OF BOBBI C. STERNHEIM

212-243-1100 • Main
917-306-6666 • Cell
888-587-4737 • Fax

33 West 19th Street - 4th Floor
New York, New York 10011
bc@sternheimlaw.com

May 7, 2020

Honorable Alison J. Nathan
United States District Court
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *United States v. Ghislaine Maxwell*
S2 20 Cr. 330 (AJN)

Dear Judge Nathan:

Once again, the government reports second- and third-hand information from the MDC, the reliability of which becomes increasingly questionable. In its May 5th letter regarding the MDC's flashlight security checks of Ms. Maxwell (Dkt. 270), the government contradicts a previous report that Ms. Maxwell "has an eye mask." This allegation, immediately refuted by her counsel, was a focus of the Second Circuit's questioning during oral argument of Ms. Maxwell's bail appeal. Now, the government reports that the MDC cannot provide an eye mask to Ms. Maxwell and that an eye mask is considered contraband. This alone is a basis for the Court to question the veracity of representations made by the MDC.

To justify the 15-minute flashlight surveillance that is causing Ms. Maxwell's disruptive sleep and sleep deprivation, the MDC claims that Ms. Maxwell is on "an enhanced security schedule." The reasons given to support the need for "heightened safety and security concerns" with respect to Ms. Maxwell are spurious. They single out Ms. Maxwell to the detriment of other pretrial detainees who face even more serious charges and potential stress (*i.e.,* defendants charged with murder and terrorism offenses subjected to life sentences without possibility of release and the death penalty) and who are incarcerated in cells by themselves. The MDC attempts to shift the focus of its conduct by claiming that it is responsive to Ms. Maxwell's "expressed concern for her safety if she were housed in general population."

The MDC should fact check its records before making bold assertions. The Intake Screening Form completed by Ms. Maxwell upon entry to the MDC on July 6, 2020 posed the following question: "Do you know of any reason why you should not be placed in general population?" Ms. Maxwell responded "No." It is the MDC, not the inmate, who makes the determination regarding general population or degree of segregation. The Intake Screening

Form listed "psych alerts," which are baseless, and "broad publicity," which is accurate and concerns risk of harm to Ms. Maxwell via violence, extortion, and feed information to the press by other inmates. Ironically, it is the MDC staff who leaked to the press that Ms. Maxwell had been vaccinated.

Further, in her desire to interact and be helpful with other inmates, Ms. Maxwell completed two programs to assist other inmates- (1) to qualify as a teacher aide and offered to help update MDC learning curriculum and (2) to qualify as companion for suicide watch. Her de facto solitary confinement prevents her from utilizing that training to assist others.

Ms. Maxwell's segregation and surveillance go way beyond the concerns posited by the MDC. It is not only other inmates who may harm Ms. Maxwell, but also the very guards tasked to her security detail who have already done harm to her: failing to provide adequate food or feed her at all in a 20-hour period, damaging her discovery hard drive, seizing her confidential legal documents, erasing her CorrLinks emails, physically abusing her. The list goes on and on. In an effort to advocate in compliance with BOP procedure, she has filed hundreds of BP-8s, BP-9s and BP-10s only to receive a response that is less than helpful, or in the absence of any response was told the form was either lost or never filed, Each and every day of her detention, she is guarded by at least three officers who watch and record, by writing and via a handheld camera, her every move: when she eats, showers, cleans her clothes, brushes her teeth, etc. As the guards feverishly write while observing Ms. Maxwell during videoconferencing with counsel, it appears that they go beyond their routine continual 15-minute reporting.

Further, her non-legal phone calls are monitored in real time. It was the staff who confronted Ms. Maxwell about the death of someone whom she was close to within hours on her learning about it, information derived from her phone calls. Ms. Maxwell does not discuss personal matters with MDC guards and did not provide information concerning the passing of someone quite dear to her. It was psychological services who confronted her regarding that information, which could only have been obtained through telephone surveillance. We invite the Court and government to review the calls which contradict the unsupported allegation that Ms. Maxwell is a flight risk and support her family strong ties. Her monitored communication with family and friends evidences her strong ties in the United States, her strong desire to return to her family in the United States, and her intention to establish her innocence at her trial in the United States.

In the face of the Epstein's death on the BOP's watch, the MDC would not risk a repeat of the debacle that occurred in the MCC. There can be no doubt that the MDC was following directives from Attorney General William Barr and the Director of the BOP in determining that Ms. Maxwell should not be placed in general population, not Ms. Maxwell. Regardless, the MDC would never risk security to Ms. Maxwell or the institution by placing her in general population, knowing the difficulties it would face in protecting Ms. Maxwell from assault and extortion by other inmates given that they do not protect her from physical abuse by guards. But that decision does not justify the degree to which the MDC overmanages Ms. Maxwell's detention and its detrimental effect on her health, well-being, and ability to prepare for trial.

We have repeatedly expressed our concern for Ms. Maxwell's health and the impact her conditions of confinement are having on her health and well-being, her ability to prepare for trial, and the overall impact the severe conditions will have on her stamina to withstand trial, which we moved to the fall. With each passing day, it becomes increasingly more obvious that Ms. Maxwell's extreme conditions of detention will not be improved and health deteriorate commensurate with the unprecedented conditions of confinement unparalleled in the MDC.

Very truly yours,

Bobbi C. Sternheim
BOBBI C. STERNHEIM

cc: Counsel for all parties

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA	:	Dkt. Nos. 21-58, 21-770
Appellee,	:	**AFFIRMATION IN OPPOSITION TO DEFENDANT'S RENEWED MOTION FOR PRETRIAL RELEASE**
- v. -	:	
GHISLAINE MAXWELL,	:	
Defendant-Appellant.	:	

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

MAURENE COMEY, pursuant to Title 28, United States Code, Section 1746, hereby declares under penalty of perjury:

1. I am an Assistant United States Attorney in the Office of Audrey Strauss, United States Attorney for the Southern District of New York, and I represent the United States of America in this matter. I submit this affirmation in opposition to defendant-appellant Ghislaine Maxwell's renewed motion for pretrial release following this Court's order, dated April 27, 2021, which denied Maxwell's prior motion for bail or temporary pretrial release and affirmed the District Court's orders denying such relief.

PRELIMINARY STATEMENT

2. Indictment 20 Cr. 330 (AJN) was filed on June 29, 2020, charging Maxwell in six counts. On July 2, 2020, Maxwell was arrested. On July 8, 2020, Indictment S1 20 Cr. 330 (AJN) (the "Indictment") was filed containing the same charges with ministerial corrections. (Dkt. 17 ("Ind.")).[1] Count One charges Maxwell with conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charges Maxwell with enticing a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2. Count Three charges Maxwell with conspiracy to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371. Count Four charges Maxwell with transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. §§ 2423 and 2. Counts Five and Six charge Maxwell with perjury, in violation of 18 U.S.C. § 1623.

3. On July 14, 2020, the Honorable Alison J. Nathan, United States District Judge, held a lengthy bail hearing, at the conclusion of which she denied

[1] "Br." refers to Maxwell's original brief on appeal; "Ex." refers to the exhibits to Maxwell's original brief; "Gov't Ex." refers to the exhibit to the Government's prior affidavit; "Mot." refers to Maxwell's May 17, 2021 renewed motion for pretrial release in this appeal; "Mot. Ex." refers to the exhibits to Maxwell's renewed motion for pretrial release; and "Dkt." refers to an entry on the District Court's docket for this case. Unless otherwise noted, case text quotations omit all internal quotation marks and alterations.

Maxwell bail. (Ex. D). Maxwell twice renewed her bail application (Ex. E, I), which motions Judge Nathan denied in written orders dated December 28, 2020 and March 22, 2021 (Ex. H, L). Maxwell filed notices of appeal from these two orders (though not the original detention order).

4. On April 27, 2021, this Court affirmed the orders denying Maxwell's pretrial release that were entered by Judge Nathan on December 28, 2020 and March 22, 2021, and denied Maxwell's motion for bail, or in the alternative, temporary pretrial release pursuant to 18 U.S.C. § 3142(i).

5. On May 17, 2021, Maxwell filed a renewed motion for pretrial release, seeking to relitigate this Court's ruling.

6. Maxwell's trial is now scheduled to begin on November 29, 2021.

STATEMENT OF FACTS

7. This Court is already familiar with the factual and procedural background of this case, which were detailed in the Government's Affirmation in Opposition to Defendant's Appeal of Orders Denying Pretrial Release, dated April 12, 2021. The Government respectfully incorporates by reference the facts and arguments set forth in its April 12, 2021 opposition.

8. In sum, the Indictment charges Maxwell with facilitating the

sexual abuse of multiple minor victims by Jeffrey Epstein between approximately 1994 and 1997.[2] (Ind. ¶ 1). During that period, Maxwell played a key role in Epstein's sexual abuse of minor girls by helping to identify, entice, and groom minor victims, who were as young as 14 years old, to engage in sex acts with Epstein. (*Id.*). Together, Maxwell and Epstein conspired to entice and cause minor victims to travel to Epstein's residences in different states, which Maxwell knew and intended would result in their grooming for and subjection to sexual abuse. (Ind. ¶ 2). To conceal her crimes, Maxwell lied under oath during a civil deposition, including when asked about her interactions with minor girls. (*Id.*).

9. The Indictment contains detailed speaking allegations which describe: the means and methods of Maxwell's criminal conduct (Ind. ¶ 4); Maxwell's interactions with three minor victims (Ind. ¶¶ 7(a)-(c)); specific overt acts performed by Maxwell (Ind. ¶¶ 11(a)-(d)); and specific false statements that form the basis of the perjury charges (Ind. ¶¶ 21, 23).

[2] After Judge Nathan's bail decisions were issued, Superseding Indictment S2 20 Cr. 330 (AJN) (the "Superseding Indictment") was filed, charging Maxwell in eight counts. In addition to the original six charges, the Superseding Indictment also charges Maxwell with sex trafficking conspiracy, in violation of 18 U.S.C. § 371, and sex trafficking of a minor, in violation of 18 U.S.C. § 1591. Among other things, the Superseding Indictment expanded the scope of the conspiracies charged in Counts One and Three from 1994 through 2004 and identified a fourth victim of those conspiracies.

10. As the Government has explained in oral and written proffers, the allegations in the Indictment are supported by the detailed, credible testimony of three different victim-witnesses. (*See, e.g.*, Ex. A at 5; Ex. F at 9-10). Each victim-witness's testimony is not only corroborated by that of the other victim-witnesses, but also by the testimony of other witnesses and documentary evidence, including flight records, diary entries, and other evidence. (*See* Ex. A at 5; Ex. F at 10-12).

11. Maxwell has made three separate bail applications to the District Court, each of which was thoroughly briefed. Judge Nathan denied all three applications in careful and thorough decisions.

12. First, after receiving extensive written submissions from the parties (Ex. A, B, C), Judge Nathan held a bail hearing on July 14, 2020, at which she heard lengthy oral argument and received statements from two victims. Judge Nathan ultimately ordered Maxwell detained on the basis of risk of flight and explained her reasoning in a detailed oral ruling. (Ex. D at 79-91). In reaching this decision, Judge Nathan found that "the nature and circumstances of the offense here weigh in favor of detention" (*id.* at 82), "[t]he government's evidence at this early juncture of the case appears strong" (*id.*), and Maxwell's history and characteristics demonstrate that she poses a risk of flight (*id.* at 83). Among other

things, Judge Nathan emphasized Maxwell's "substantial international ties," including "multiple foreign citizenships," "familial and personal connections abroad," and "at least one foreign property of significant value." (*Id.*). Judge Nathan further noted that Maxwell "possesses extraordinary financial resources," lacks "any dependents, significant family ties or employment in the United States," and made representations to Pretrial Services about her finances that "likely do not provide a complete and candid picture of the resources available." (*Id.* at 83-84). Accordingly, Judge Nathan found that the Government had carried its burden of demonstrating that Maxwell "poses a substantial actual risk of flight" and that "even the most restrictive conditions of release would be insufficient" to ensure Maxwell's appearance, especially in light of her "demonstrated sophistication in hiding [her financial] resources and herself." (*Id.* at 86-87). Judge Nathan also rejected Maxwell's arguments about the difficulty of preparing a defense while incarcerated, finding that measures in place were sufficient to ensure Maxwell's access to her counsel. Judge Nathan directed the Government to work with the defense "to provide adequate communication between counsel and client" and invited the defense to make specific applications to the District Court for further relief if the process was "inadequate in any way." (*Id.* at 90-91).

13. Second, on December 8, 2020, Maxwell renewed her request for bail, presenting a revised bail package with additional financial restrictions. (Ex. E). After considering multiple written submissions (Ex. E, F, G), Judge Nathan denied Maxwell's application in a detailed written opinion (Ex. H). Judge Nathan found that the arguments presented "either were made at the initial bail hearing or could have been made then" and the new information "only solidifies the Court's view that [Maxwell] plainly poses a risk of flight and that no combination of conditions can ensure her appearance." (Ex. H at 1-2). Among other things, Judge Nathan concluded that the case against Maxwell "remains strong" in light of the Government's proffer of evidence. (*Id.* at 10). Judge Nathan further found that Maxwell still had "substantial international ties," "multiple foreign citizenships," "familial and personal connections abroad," and "extraordinary financial resources" that would still "provide her the means to flee the country and to do so undetected." (*Id.* at 11-13). Judge Nathan emphasized that Maxwell's "pattern of providing incomplete or erroneous information to the Court or to Pretrial Services bears significantly" on her assessment of Maxwell's history and characteristics. (*Id.* at 15). Judge Nathan therefore again concluded that Maxwell presented a risk of flight and that Maxwell's proposed bail package "cannot reasonably assure her appearance." (*Id.* at 16). Additionally, Judge Nathan was

"unpersuaded" by Maxwell's argument "that the conditions of her confinement are uniquely onerous, interfere with her ability to participate in her defense, and thus justify release." (*Id.* at 20). In particular, Maxwell did not "meaningfully dispute" that she has received more time than other inmates at the Metropolitan Detention Center ("MDC") to review discovery and as much, if not more, time to communicate with her lawyers. (*Id.*).

14. Third, on February 23, 2021, Maxwell filed yet another bail application, proposing two additional bail conditions. (Ex. I). After considering multiple written submissions (Ex. I, J, K), Judge Nathan denied Maxwell's request in another written opinion (Ex. L). Judge Nathan reiterated that detention was warranted in light of the proffered strength and nature of the Government's case, Maxwell's "substantial international ties, familial and personal connections abroad, substantial financial resources, and experience evading detection," and Maxwell's "lack of candor regarding her assets" at the time of her arrest. (*Id.* at 7). Judge Nathan noted, "If the Court could conclude that any set of conditions could reasonably assure the Defendant's future appearance, it would order her release. Yet while her proposed bail package is substantial, it cannot provide such reasonable assurances." (*Id.* at 11).

15. Throughout the pendency of this case, Judge Nathan has closely

monitored Maxwell's conditions of confinement, including by ordering the Government to submit regular updates regarding that topic (*see* Gov't Ex. A (compiling update letters and relevant court orders)), and by reviewing and addressing defense motions regarding Maxwell's conditions of confinement (*see, e.g.*, *id.* at 10-11).

16. Maxwell appealed Judge Nathan's latter two bail decisions. In connection with that appeal, Maxwell also moved for pretrial release pending appeal. After receiving briefing and hearing oral argument, this Court affirmed Judge Nathan's bail decisions and denied Maxwell's motion for pretrial release on April 27, 2021. (Mot. Ex. A). Responding to claims about Maxwell's sleeping conditions that had been raised in her briefing and at oral argument, this Court's order noted that any request for "relief specific to [Maxwell's] sleeping conditions" at the MDC "should be addressed to the District Court." (*Id.*).

17. At no point after this Court's bail decision did Maxwell file a renewed motion for pretrial release in the District Court.

18. Following the issuance of this Court's decision, on April 29, 2021, Maxwell submitted a letter to Judge Nathan asking the District Court "to address Ms. Maxwell's sleeping conditions by directing the MDC to cease 15-minute light surveillance of Ms. Maxwell or justify the need for the disruptive

flashlight surveillance." (Mot. Ex. C at 2). That same day, Judge Nathan directed the Government to confer with MDC legal counsel and provide the District Court with an explanation of what flashlight surveillance the MDC conducts on Maxwell at night, the basis for such surveillance, and the availability of an appropriate eye covering for Maxwell's use at night. (Dkt. 257).

19. On May 5, 2021, the Government submitted a letter to Judge Nathan conveying MDC legal counsel's answers to the District Court's questions. (Mot. Ex. D). First, the Government confirmed that all inmates at the MDC are subject to some form of flashlight checks throughout the night for their safety and security. In particular, MDC staff point a flashlight at the ceiling of each cell in order to illuminate the cell enough to confirm that each inmate "is present in the cell, breathing, and not in distress." (*Id.* at 1). MDC staff conduct such checks every 30 minutes in the Special Housing Unit ("SHU"), and approximately once per hour for inmates housed in general population. (*Id.*). Because Maxwell is on an enhanced security schedule, MDC staff conduct these nighttime checks on her every 15 minutes. (*Id.*). Second, the Government conveyed that the MDC has determined that, although Maxwell is not on suicide watch, increased frequency of nighttime monitoring is warranted in her case due to several factors that "raise heightened safety and security concerns," including the charges she faces, the

increased stress of a high-profile case, and her sleeping situation in a cell by herself without a cellmate. (*Id.* at 2). Third, the Government noted that the MDC would not permit Maxwell to have an eye mask because such an item is not available in commissary and is not issued to inmates. (*Id.*). MDC staff do, however, permit Maxwell to cover her eyes at night using other items that are available in commissary or that are issued to inmates. (*Id.*).

20. In response, on May 7, 2021, Maxwell filed a reply letter disputing the MDC's explanation for the implementation of an enhanced security schedule for Maxwell and raising additional concerns regarding conditions at the MDC beyond Maxwell's sleeping conditions but without seeking particular relief as to those conditions. (Mot. Ex. E). At no point did Maxwell file an affidavit in support of her claims regarding the conditions of her confinement.

21. On May 14, 2021, Judge Nathan issued a written decision denying Maxwell's request for an order directing the MDC to modify its nighttime monitoring schedule. (Mot. Ex. B). In reaching this decision, Judge Nathan noted that Maxwell's claim that MDC staff was shining a flashlight directly into her eyes and disrupting her sleep was "unsupported by affidavit or other factual showing." (*Id.* at 1). Judge Nathan emphasized that all MDC inmates are subject to nighttime flashlight checks and found that "there are a number of neutral reasons"

justifying the MDC's decision to monitor Maxwell more frequently at night than other inmates. (*Id.*). With respect to eye coverings, Judge Nathan noted that the prohibition on eye masks "is a generally applicable policy," but Maxwell is nevertheless permitted to "use other non-contraband items to cover her eyes" at night. (*Id.* at 2). Judge Nathan concluded that "nothing in the record plausibly establishes that current protocols interfere with Maxwell's ability to prepare for her trial and communicate with her lawyers." (*Id.*). Consistent with the attention she has paid to Maxwell's conditions of confinement throughout the pendency of this case, Judge Nathan instructed the Government and the MDC "to continue to ensure that Maxwell is subjected to only those security protocols" that are "necessary for her safety and security, based upon neutral and applicable factors, and consistent with the treatment of similarly situated pre-trial detainees." (*Id.*).

ARGUMENT

Maxwell's Motion Should Be Denied

22. This Court has already affirmed Judge Nathan's orders denying bail or temporary pretrial release to Maxwell and accordingly denied her motions seeking such relief on appeal. The instant motion, which Maxwell styles as a

"renewed motion for pretrial relief," is both procedurally improper and substantively meritless. It should be denied.

A. Applicable Law

23. When seeking pretrial detention, the Government bears the burden of showing, by a preponderance of the evidence, that the defendant poses a risk of flight, and that no condition or combination of conditions would reasonably assure her presence in court. *See* 18 U.S.C. § 3142(f); *United States v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007).

24. Where the defendant is charged with certain offenses, including offenses involving a minor victim under 18 U.S.C. §§ 2422 or 2423, a statutory presumption arises "that no condition or combination of conditions will reasonably assure the appearance of the person as required . . . ." 18 U.S.C. § 3142(e)(3)(E). In such a case, the defendant "bears a limited burden of production—not a burden of persuasion—to rebut that presumption by coming forward with evidence that he does not pose . . . a risk of flight." *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001).

25. Where the Government seeks detention based on flight risk, the court must consider: (1) "the nature and circumstances of the offense charged"; (2)

"the weight of the evidence against the person"; and (3) the "history and characteristics of the person." 18 U.S.C. § 3142(g).

26. This Court applies "deferential review to a district court's order of detention." *United States v. Watkins*, 940 F.3d 152, 158 (2d Cir. 2019). It reviews for clear error the district court's findings regarding risk of flight and whether the proposed bail package would reasonably assure the defendant's appearance in court, *see United States v. English*, 629 F.3d 311, 319 (2d Cir. 2011); *United States v. Shakur*, 817 F.2d 189, 196 (2d Cir. 1987), and will reverse only if "on the entire evidence," it is "left with the definite and firm conviction that a mistake has been committed," *Sabhnani*, 493 F.3d at 75.

27. Once a defendant has been ordered detained, a judicial officer may "permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason." 18 U.S.C. § 3142(i). The defendant bears the burden of showing that temporary release is necessary. *See United States v. Scarborough*, 821 F. App'x 598, 600 (6th Cir. 2020); *United States v. Belardo*, No. 20 Cr. 126 (LTS), 2020 WL 1689789, at *2 (S.D.N.Y. Apr. 7, 2020). This Court has not resolved whether it reviews a district court's temporary release decision for

abuse of discretion or clear error. *See United States v. McCloud*, 837 F. App'x 852, 853 n.3 (2d Cir. 2021).

B. Discussion

28. This Court has already affirmed Judge Nathan's bail determinations and denied Maxwell's application for pretrial release. The only changed circumstance since this Court rendered that decision—Judge Nathan's determination that the MDC's nighttime security protocols do not interfere with Maxwell's ability to prepare for trial—does nothing to alter the conclusion that Judge Nathan did not clearly err or abuse her discretion when denying Maxwell's prior bail applications.

29. As an initial matter, it bears noting that Maxwell did not docket a new appeal from any order entered by Judge Nathan. Instead, she filed her "renewed motion" under the same docket as her initial appeal, thereby effectively asking the same panel of this Court to reconsider its earlier decision. To the extent this motion is construed as one for panel reconsideration, it is untimely under Federal Rule of Appellate Procedure 40(a)(1) and Local Rules 40.1 and 40.2.

30. In addition, since this Court denied Maxwell's bail appeal, Maxwell has not filed a renewed motion for bail or temporary release in the District Court based on any alleged changed circumstances. As this Court has explained in

the context of post-conviction bail proceedings, "given the findings that must be made in order to warrant release, it is generally more appropriate that the motion be made initially in the district court." *United States v. Hochevar*, 214 F.3d 342, 344 (2d Cir. 2000) (per curiam); *see* Fed. R. App. P. 9(a) (providing for appeals from detention orders); *cf. generally Stack v. Boyle*, 342 U.S. 1, 6 (1951) (explaining, before passage of the Bail Reform Act, that "[t]he proper procedure for challenging bail as unlawfully fixed is by motion for reduction of bail and appeal to the Court of Appeals from an order denying such motion"). The Order Maxwell annexes to her motion—an Order regarding security checks at the MDC (Mot. Ex. B)—is not a bail determination, and Maxwell has not taken an appeal from that Order. *See* Fed. R. App. P. 9(a) (requiring that a party appealing a detention order must file "a copy of the district court's order . . . as soon as practicable after filing the notice of appeal"). No bail determination is properly before this Court.

31. In any event, Maxwell's "renewed motion" is substantively meritless. This Court has already held that Judge Nathan did not commit clear error in finding, three times, that the Government established by a preponderance of the evidence that Maxwell is a risk of flight and no bail conditions could reasonably assure her appearance in court. This Court has also concluded that Judge Nathan did not abuse her discretion or clearly err in determining that Maxwell's conditions

of confinement do not warrant temporary release. Nothing in Maxwell's renewed motion alters that conclusion.

32. "As a general matter, this Court will adhere to its own decision at an earlier stage of the litigation." *United States v. Plugh*, 648 F.3d 118, 123 (2d Cir. 2011). The "law of the case doctrine is subject to limited exceptions made for compelling reasons," such as where there is "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Id.* at 123–24; *see also United States v. Tenzer*, 213 F.3d 34, 39 (2d Cir. 2000) ("We have stated that we will not depart from this sound policy absent cogent or compelling reasons."). Maxwell has offered no persuasive reason, let alone a "compelling" reason, *Plugh*, 648 F.3d at 123, for this Court to reverse its prior decision.

33. The only new events that Maxwell cites as justification for her request that this Court reverse itself is additional letter briefing before the District Court regarding MDC's nighttime security checks. Nothing about that briefing or Judge Nathan's most recent written order suggests that Judge Nathan clearly erred when finding Maxwell poses a flight risk or abused her discretion when determining that temporary release is not warranted.

34. Consistent with her practice throughout the pendency of this case, Judge Nathan carefully considered Maxwell's most recent complaint that nighttime security checks by MDC staff interfere with her ability to prepare for trial. When Maxwell asked Judge Nathan to direct the MDC either to modify its nighttime surveillance procedures or to justify those procedures, Judge Nathan solicited a response from the MDC and evaluated the explanation provided. In so doing, Judge Nathan focused on whether the MDC implemented the contested protocol based on neutral factors that justify any deviation from the ordinary practice.

35. Maxwell faults Judge Nathan for not "tell[ing] the Bureau of Prisons what to do." (Mot. at 2). But even assuming that it were proper for a District Court to instruct the Bureau of Prisons regarding the details of operating a jail, Maxwell fails to explain why it was unreasonable to conclude that an increase of nighttime checks from the 30-minute intervals applicable in the SHU to the 15-minute intervals applied to Maxwell was warranted given the specific factors that heighten safety and security concerns for Maxwell. Unlike most other inmates, Maxwell does not have a cellmate who could alert staff if she was in distress, and Maxwell faces very serious charges under the glare of a high-profile case, the stress of which increases the possibility that she may self-harm. Moreover, as Judge Nathan noted, Maxwell offered no evidence to support the notion that those

nighttime checks involve shining a flashlight directly into her eyes (as opposed to the ceiling), that the checks in fact disturb her sleep, or that the checks prevent her from being able to prepare her defense.[3]

36. It bears emphasis that Maxwell's appeal ostensibly concerns a motion for pretrial release, such that the conditions of her confinement are relevant only insofar as they affect her ability to prepare for trial. As this Court previously recognized, the appropriate avenue for Maxwell to raise concerns about her ability to prepare for trial is through an application to the District Court. Maxwell availed herself of that process, but in so doing offered no evidence that the MDC's security protocols are unjustified or interfering with her preparation for trial. Tellingly,

[3] Maxwell repeatedly accuses the Government of making misrepresentations during the course of this case. It is correct that the MDC informed the Government that Maxwell wore an eye mask at night, when in fact she uses other non-contraband items to cover her eyes. The Government conveyed the MDC's imprecise language in an April 6, 2021 letter to Judge Nathan but has since recognized and acknowledged the inaccuracy. The remaining accusations, however, are unfounded. For example, Maxwell takes Government counsel's statement at oral argument about nighttime checks being "routine" out of context when claiming that it involved some representation that all inmates experience flashlight checks every 15 minutes. To the contrary, when asked whether the nighttime checks were conducted at that interval for every inmate, Government counsel clarified, "I can't speak to what is done as to all inmates." Only after conferring with the MDC did the Government convey to Judge Nathan, and now this Court, the MDC's procedures for nighttime checks of all inmates. The Government has and will continue to accurately represent the information it receives from the MDC when necessary to respond to Maxwell's complaints or inquiries from the Court.

Maxwell did not couch her most recent request to the District Court as an application for pretrial release; instead, she sought an order directing the MDC to modify its operations or justify its procedures. In the absence of any evidence that the MDC's protocols interfered with Maxwell's trial preparation, Judge Nathan acted well within her discretion in declining to order the MDC to alter its security measures. Even in so doing, Judge Nathan reiterated her commitment to monitoring Maxwell's conditions of confinement and ensuring that they do not interfere with preparation for trial. This series of events simply does not suggest that Judge Nathan abused her substantial discretion when denying Maxwell's prior applications for bail or temporary release.

37. To the extent Maxwell now raises new complaints about conditions at the MDC before this Court, such issues should be presented to the District Court and reviewed by Judge Nathan. In any event, as was the case with her concerns about nighttime security checks, Maxwell has offered no evidence to support her claim that these additional complaints are true or prevent her from preparing for trial. There is simply no evidence in the record beyond the bare assertions of counsel that MDC's water is undrinkable, that the MDC provides inadequate food, that the MDC audio records legal visits, or that sewage overflows

into Maxwell's unit.[4] Maxwell tries to point to the case of Tiffany Days as corroboration of supposed sewage flooding, but she critically omits that the flooding described in the Days case occurred at the Metropolitan Correctional Center (the "MCC"), *not* the MDC. (*See United States v. Days*, 19 Cr. 619 (CM) (S.D.N.Y. Apr. 29, 2021), Sentencing Tr. at 13-16 (describing incidents Tiffany Days experienced while at the MCC, including flooding of sewage, *before* being transferred to the MDC)). There is no evidence in the record from the Days case or this case that there has been any such flooding or sewage backup at the MDC during Maxwell's incarceration there. To the extent Maxwell suggests that any such issue exists and interferes with her ability to prepare for trial, she can and should seek relief before the District Court. Similarly, Maxwell's new complaints about her ability to review discovery are best raised in the first instance before Judge Nathan.[5]

---

[4] Although Maxwell complains that she has been "in solitary confinement" (Mot. at 3), she does not dispute that it would be unsafe for her to be housed in general population. Indeed, Maxwell has never specifically requested a transfer to general population. Nor does she dispute that the MDC has made accommodations so that she is not housed in the SHU while in protective custody. Rather, Maxwell has access to a day room outside of her cell every day for thirteen hours per day, during which she has exclusive access to a desktop computer, a laptop computer, a telephone, a television, and a shower. (*See* Dkt. 196 at 2).

[5] As the Government has noted in the District Court, the Government and MDC have gone to significant lengths to ensure that Maxwell has ample time and resources

38. The only question even arguably before this Court at this juncture is whether Judge Nathan committed clear error when detaining Maxwell as a flight risk or abused her discretion when denying Maxwell temporary release. Nothing in the renewed motion undermines Judge Nathan's conclusion that Maxwell poses a real risk of flight. Nor does the renewed motion explain how Judge Nathan's careful consideration of the MDC's nighttime security protocols and continued monitoring of Maxwell's ability to access her discovery and communicate with counsel transforms the denial of pretrial release into an abuse of discretion. Simply put, the renewed motion fails to present any "compelling" reason for this Court to reverse its prior decision in this case. *Plugh*, 648 F.3d at 123.

---

to review her discovery. (*See, e.g.*, Dkt. 235 at 7 n.4; Dkt. 196 at 1-2). Among other things, Maxwell has exclusive access to both a desktop and a laptop computer on which to review her discovery, thirteen hours per day, seven days per week. She is also able to review discovery with her attorneys during the 25 hours of legal video-teleconference calls she receives each week. (*See* Dkt. 196 at 1-2).

CONCLUSION

39. For the foregoing reasons, Maxwell's motion should be denied.

Dated: New York, New York
May 27, 2021

/s/ Maurene Comey
Maurene Comey / Alison Moe /
Lara Pomerantz / Andrew Rohrbach
Assistant United States Attorneys
Southern District of New York
Telephone: (212) 637-2324

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel hereby certifies that this opposition complies with the type-volume limitation of the Federal Rules of Appellate Procedure. As measured by the word processing system used to prepare this opposition, there are 5,164 words in this opposition.

/s/ Maurene Comey
MAURENE COMEY
Assistant United States Attorney
Southern District of New York
Telephone: (212) 637-2324

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 2nd day of June, two thousand twenty-one.

Before: Pierre N. Leval,
Raymond J. Lohier, Jr.,
Richard J. Sullivan,
Circuit Judges.

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant – Appellant.

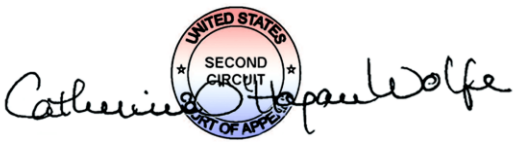
ORDER

Docket Nos. 21-58(L), 21-770(Con)

Appellant renews her request for pretrial release. In the alternative, she requests that the Court remand this matter to the district court to conduct an evidentiary hearing on the conditions of her confinement. The Government opposes the motion.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court



MANDATE

21-58-cr (L), 21-770-cr
United States v. Maxwell

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of April, two thousand twenty-one.

PRESENT: PIERRE N. LEVAL,
RAYMOND J. LOHIER, JR.,
RICHARD J. SULLIVAN,
Circuit Judges.

United States of America,

Appellee,

v.

21-58-cr (L)
21-770-cr

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant-Appellant.

Defendant-Appellant Ghislaine Maxwell appeals from orders of the District Court entered December 28, 2020 and March 22, 2021, which denied her renewed requests for bail pending trial. See Dkts. 1, 20. Upon due consideration, it is hereby ORDERED that the District Court's orders are AFFIRMED and that Appellant's motion for bail, or in the alternative, temporary pretrial release pursuant to 18 U.S.C. § 3142(i), Dkt. 39, is DENIED. During oral argument, counsel for Appellant expressed concern that Appellant was improperly being deprived of sleep while incarcerated. To the extent Appellant seeks relief specific to her sleeping conditions, such request should be addressed to the District Court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

MANDATE ISSUED ON 06/07/2021