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]

Motion for: Pretrial Release

Set forth below precise, complete statement of relief sought:

Ghislaine Maxwell requests that this Court set reasonable bail or in the alternative, remand for an evidentiary hearing.

United States of America v. Ghislaine Maxwell

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

☐ Plaintiff ☐ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: David Oscar Markus **OPPOSING ATTORNEY:** Won. S. Shin, AUSA

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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:** 04/01/2021 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 Motion for Pretrial Release

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Appellant Ghislaine Maxwell's Motion for Pretrial Release

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 over 280 days, 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 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. The medical literature is unanimous that such conditions produce mental deterioration, which prevents her from effective participation in trial preparation.

Worse, even if Ms. Maxwell were able to be fully alert and mentally acute, she must review over 2,500,000 prosecution pages on a gutted computer, which does not have the ability to search, edit, or print. Because of the pandemic, in-person lawyer visits are risky, so Ms. Maxwell sees her trial lawyers over a video screen, where she can review one page of the discovery at a time that is projected on a wall three feet away.

These conditions would support a complaint for cruel and unusual punishment for a convicted felon. Ms. Maxwell is not one. She is innocent unless and until she is proven guilty beyond a reasonable doubt – an event which is highly unlikely given the lack of evidence against her.

Despite the district court's exhortations regarding the strength of the evidence against Ms. Maxwell, the truth is that the government's so-called "evidence," though voluminous, is palpably weak. It consists of anonymous, untested hearsay accusations about events that are alleged to have occurred decades ago, accusations which only surfaced when the government faced public outrage over the inexplicable death of Jeffrey Epstein, while in their custody.

The "Epstein Effect" clouded the judgment of the prosecutors into charging Ms. Maxwell because it needed a scapegoat, the Bureau of Prisons into putting Ms. Maxwell on suicide watch because Epstein died on their watch, the media into an absolute frenzy, and many other fair-minded people into viewing Ms. Maxwell as guilty even though no **evidence** has been presented against her.

Notwithstanding the cries of the mob, Ms. Maxwell is presumed innocent and is entitled to defend herself. Accordingly, Ms. Maxwell moves this Court for her immediate release. Fed. R. App. P. 9; 18 U.S.C. §§3142 and 3145.

* * *

ISSUES PRESENTED

1. Whether Ms. Maxwell can effectively prepare her defense where she is being subjected to horrific conditions of detention during a global pandemic, including:

    - not being able to regularly see her lawyers in person to prepare for trial;
    - being kept awake all night to make sure she does not commit suicide even though nothing suggests she is a suicide risk;
    - having her every movement videotaped on multiple cameras focused on her every move;
    - being stuck in *de facto* solitary confinement without safe, in person visitation;
    - being forced to review millions of pages of documents on a stripped down computer without adequate hardware or software such that Ms. Maxwell cannot open tens of thousands of pages of discovery and for those she can open, only has the ability to review them one page at a time and cannot search, edit, copy, or print;
    - having no writing surface in her solitary cell; and
    - not consistently provided edible food or drinkable water.

2. Whether the trial court erred by relying on the government's proffer — which was comprised of nothing but extremely old, anonymous, unconfronted, hearsay accusations — to refuse to set reasonable bail.

FACTS

Ghislaine Maxwell is a 59-year-old, law-abiding United States citizen with no criminal history. In July 2020, she was living peacefully in her New Hampshire home and was in contact, through her attorneys, with the U.S. Attorney's office in the Southern District New York, which had opened an investigation into her only after the death of Jeffrey Epstein. Instead of asking her to surrender, that office had her arrested by a SWAT team and other unnecessary but intentionally showy tactics. That same day, the acting U.S. Attorney held a press conference with large charts, pausing for pictures for the media,[1] before Ms. Maxwell had even appeared in the Southern District of New York.

Since her arrest, Ms. Maxwell has faced nightmarish conditions. *See, e.g.,* Ex.M. Though she is a model prisoner who poses no danger to society and has done literally nothing to prompt "special" treatment, she is kept in isolation – conditions fitting for Hannibal Lecter but not a 59-year old woman who poses no threat to anyone. She is subjected to multiple invasive searches every day. Her every movement is captured on multiple video cameras. She is deprived of any real sleep by having a

[1] The press conference is available online at https://tinyurl.com/bku2av7t

flashlight pointed into her cell every 15 minutes. For months, her food was microwaved with a plastic covering, which rendered it inedible after the plastic melted into the food.[2] The water is often cloudy and is not drinkable. Because of the pandemic, it is not safe to meet with her lawyers in person, so she cannot adequately prepare for trial. She is on suicide watch for no reason. She continues to lose weight, her hair, and her ability to concentrate.

It is obvious that the BOP is subjecting Ms. Maxwell to this behavior because of the death of Epstein (and subsequent fallout). But how is this permissible? Since when are the conditions for one inmate dictated by the fate of another? Perhaps never in the history of the U.S. Justice System has the public relations imperatives of the government permitted such wildly inappropriate and unconstitutional treatment of an innocent human being. It is impossible for Ms. Maxwell to participate effectively in the preparation of her defense under these conditions.

The charges related to three of the anonymous accusers in the operative indictment are 25 years old, alleging actions from 1994-1997,

[2] The prison has now promised to heat the food properly.

while the just added accuser involves allegations from 2001-04.[3] That the indictment exists at all is a function – solely – of the untimely death of Jeffrey Epstein and the media frenzy that followed. The indictment against Ms. Maxwell was brought only in the search for a scapegoat after the same U.S. Attorney's Office had to dismiss its case against Epstein because of his death at MCC. If there truly was any case against Ms. Maxwell, she would have been charged with Epstein in the SDNY in 2019. But she was not. She also was not charged – or even named – in the 2008 Epstein case in Florida. She would never be facing charges now if Epstein were alive.

Although there have been a number of orders related to bond in this case, the district court held only one detention hearing. At that hearing the government stated that Ms. Maxwell was a flight risk and that its case was strong. But it did not proffer any actual evidence in support of its contention, or the district court's conclusion, that the weight of the evidence against Maxwell was strong. Ex.A. Instead, it pointed again and again only to the fact that the grand jury returned an

[3] The government superceded the indictment on March 29, just months before the July trial, adding two counts involving a fourth anonymous accuser.

indictment (which is, of course, true in every criminal case) and to the nature of the charges in the abstract. The district court bought into the government's conclusory allegations, stating without support that: "[M]indful of the presumption of innocence, the Court remains of the view that in light of the **proffered strength** and nature of the Government's case, the weight of the evidence supports detention." (emphasis added).

The court fundamentally erred in relying on the government's empty assertions that its case is strong. There was no principled way for the court to reach such a conclusion without hearing any evidence and without knowing anything at all about the allegations, especially here where the case is so old and based on anonymous hearsay which the defense has never been able to confront. The government did not even proffer that these anonymous accusers even made their claims under oath. Prosecutors refuse to disclose their names, their statements, the specifics of their allegations, or anything about them.

This case is anything but strong. Ms. Maxwell should be granted bail or, at the very least, the case should be remanded for an

evidentiary hearing to test whether the government's case even marginally supports detention.

PROCEDURAL HISTORY

A. The arrest and bail applications

Ghislaine Maxwell was arrested on July 2, 2020 and since that date has been detained in jaw-droppingly appalling conditions. The government claims that Ms. Maxwell was Jeffrey Epstein's "associate" and helped him "groom" minors for sex back in the 1990s and early 2000s. Doc. 187. The indictment does not name these accusers and the government has refused to disclose their names or the specific dates that Ms. Maxwell supposedly did anything criminal.

After her arrest, the government moved for detention. Ex.A. The defense responded. Ex.B. And the government replied. Ex.C. The trial judge held the arraignment and bond hearing over Zoom. Ex.D. The government did not call any of the accusers in the indictment or present any witnesses related to flight, danger, or the strength of its case. The government conceded that it was not asking for detention based on danger to the community. The court ordered Ms. Maxwell detained at the conclusion of the hearing. Ex.D.

The court said it was detaining Ms. Maxwell, in part, because the government proffered that its "witness testimony will be corroborated by significant contemporaneous documentary evidence." Ex.D at 82. The court also pointed to Ms. Maxwell's lack of "significant family ties" in the United States, her unclear financial picture, the "circumstances of her arrest," and that although she is a U.S. citizen, she is also a citizen of France and Britain. *Id.* at 82-87.

Ms. Maxwell filed a second motion for bail and addressed each of these concerns. Ex.E. For starters, the defense explained that none of anonymous accusers' testimony of abuse was corroborated and that it all related to Epstein, not Ms. Maxwell. In addition, Ms. Maxwell does have significant ties to the United States, her assets were thoroughly disclosed and vetted, and she is willing to waive extradition. The government responded. Ex.F. The defense replied. Ex.G. The judge again denied bail, relying, for the second time, on the "strong" evidence, even though **no** evidence was presented to the court to rely on.[4]

Ms. Maxwell filed a third motion for bail. Ex.I. In this application, she offered to renounce her foreign citizenship and also to have her

[4] Ms. Maxwell filed a notice of appeal from this Order, which is docketed in Case No. 21-58.

assets controlled and monitored by a former federal judge and former U.S. Attorney. She also cited the 12 pretrial motions she filed. "Without prejudicing the merits of any of those pending motions," the judge again denied Ms. Maxwell's motion for bail, relying in part on the "proffered strength and nature of the Government's case," even though, again, no evidence was actually submitted to or reviewed by the trial court. This appeal follows.

In each of her bail requests and in separate pleadings, Ms. Maxwell has documented the Kafkaesque conditions that she is forced to endure. *See, e.g.,* Ex.M.

B. The pretrial motions

Ms. Maxwell filed 12 substantial pretrial motions. Docs. 119-26; 133-48. These include motions to dismiss for violation of the statute of limitations (Docs. 143-44) and for pre-indictment delay (Docs. 137-38) because the conduct is so old. And to dismiss because the government violated the non-prosecution agreement it reached with Epstein that protected any alleged co-conspirator from prosecution. Docs 141-42. The government needed 212 pages to respond to these motions. These

motions are pending and raise significant legal bars to the prosecution of this matter.

C. *The proposed bail package*

Ghislaine Maxwell has proposed a significant, compelling, and unprecedented bail package, which gives up or puts at risk everything that she has – her British and French citizenship, all of her and her spouse's assets ($22.5 million),[5] her family's livelihood, and the financial security of her closest friends and family (totaling $5 million). A security company, which will monitor and secure Ms. Maxwell at her home, will also post an unprecedented $1 million bond. Ex.E, I.

Ms. Maxwell looks forward to confronting the accusers and clearing her name. She has no intention of fleeing and will be unable to do so if released on bond. This bail package demonstrates these facts in a real way, unlike the government's claims that the evidence against her is strong. Even though a guarantee of appearance is not necessary, the bail package in this case is as close to a guarantee as one can get. There is no legally permissible basis to deny bail.

[5] Her spouse would retain $400,000 for living and other expenses.

STANDARD OF REVIEW

The question of whether a bail package will reasonably assure the defendant's presence is a mixed question of law and fact. *United States v. Horton*, 653 F. App'x 46, 47 (2d Cir. 2016). This Court reviews the district court's purely factual findings for clear error. *Id.* However, the district court's ultimate finding "may be subject to plenary review if it rests on a predicate finding which reflects a misperception of a legal rule applicable to the particular factor involved." *Id.* at 319–20 (quoting *United States v. Shakur*, 817 F.2d 189, 197 (2d Cir. 1987)). That is, "even if the court's finding of a historical fact relevant to that factor is not clearly erroneous, [the appellate court] may reverse if the court evinces a misunderstanding of the legal significance of that historical fact and if that misunderstanding infects the court's ultimate finding." *Shakur*, 817 F.2d at 197.

MEMORANDUM OF LAW

I. Ghislaine Maxwell should be released under §3142(i) because she cannot effectively prepare her defense under the horrific conditions she is facing.

Trying to defend against exceedingly old, anonymous allegations is hard enough. Doing so while in *de facto* solitary confinement without

the real ability to meet with your lawyers face-to-face while being kept up all night and being given inedible food makes it virtually impossible, and violates Ms. Maxwell's constitutional rights.

Section 3142(i) makes clear that defendants must have the ability to consult with counsel and effectively prepare for their defense. If this is not possible in custody, release is required. *United States v. Chandler*, 1:19-CR-867 (PAC), 2020 WL 1528120, at *2 (S.D.N.Y. Mar. 31, 2020) (extraordinary burdens imposed by the coronavirus pandemic, in conjunction with detainee's right to prepare for his defense, constituted compelling reason to order temporary release from Metropolitan Correction Center). The COVID epidemic is still raging and conditions at MDC are unsafe.[6]

Ms. Maxwell's continued detention would be wrong at any point in this nation's history, even when stealing a loaf of bread was a felony. It is especially unwarranted now. "The hazards of a pandemic are immediate and dire, and still the rights of criminal defendants who are

[6] Just for example, the air is not properly filtered in the small, enclosed attorney visit rooms at MDC and has been described as "a death trap" for lawyers and inmates. Ex.K, n.8. Even though the prison is technically open for legal visits, lawyers are understandably not willing to walk into a viral petri dish.

subject to the weight of federal power are always a special concern of the judiciary." *Chandler*, 2020 WL 1528120, at *2; *United States v. Stephens*, 447 F. Supp. 3d 65-67 (S.D.N.Y. 2020) (finding that "the obstacles the current public health crisis poses to the preparation of the Defendant's defense constitute a compelling reason under 18 U.S.C. § 3142(i)"); *United States v. Weigand*, 20-CR-188-1 (JSR), 2020 WL 5887602, at *2 (S.D.N.Y. Oct. 5, 2020) (holding that a wealthy defendant, who the government claimed was a flight risk, would be allowed to obtain his release pending trial during the coronavirus pandemic).

"The right to consult with legal counsel about being released on bond, entering a plea, negotiating and accepting a plea agreement, going to trial, testifying at trial, locating trial witnesses, and other decisions confronting the detained suspect, whose innocence is presumed, is a right inextricably linked to the legitimacy of our criminal justice system." *Fed. Defs. of N.Y. v. Fed. Bureau of Prisons*, 954 F.3d 118, 134 (2d Cir. 2020); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.").

In *United States v. Clark*, 448 F. Supp. 3d 1152, 1155 (D. Kan. 2020), the court emphasized that "[m]ost courts addressing a motion for temporary release under §3142(i) have done so in the context of evaluating the necessity of the defendant assisting with preparing his or her defense ... This extends to the current COVID-19 pandemic [because of] the pandemic's impact on counsel's difficulties communicating with the defendant." *See, e.g., Stephens*, 447 F. Supp. 3d at 65-67 (finding "the obstacles the current public health crisis poses to the preparation of the Defendant's defense constitute a compelling reason under 18 U.S.C. § 3142(i)"); *United States v. Robertson*, 17-Cr-2949, Doc. 306 (D.N.M. February 6, 2021).[7]

The defendant in *Robertson* was charged with "frightening allegations" involving a shooting. He had previously violated bond. And he had a criminal record involving guns and drugs. But the court ordered him released because of his inability to prepare for trial while in custody during the pandemic:

> Mr. Robertson's release is necessary for the preparation of his trial defense under 18 U.S.C. § 3142(i). That section allows a judicial

[7] The 10th Circuit has stayed the *Robertson* order while it considers the government's appeal.

> officer who issued an order of detention to, by subsequent order, "permit the temporary release of the 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." § 3142(i).

The presumption of innocence should not be paid mere lip service, the court held, and being held without the ability to see counsel face-to-face was "no way to prepare for trial."

Ms. Maxwell presents a more compelling case than *Robertson* for temporary release under § 3142(i). Courts considering whether pretrial release is necessary have considered: "(1) [the] time and opportunity the defendant has to prepare for the trial and to participate in his defense; (2) the complexity of the case and volume of information; and (3) expense and inconvenience associated with preparing while incarcerated." *Robertson*, (citing *United States v. Boatwright*, 2020 WL 1639855, at *4 (D. Nev. Apr. 2, 2020) (unreported) (citations omitted).

Trial is set for July. There is precious little time left to prepare and participate in that preparation. The discovery involves millions of pages of documents. Ms. Maxwell cannot conduct searches of these documents; she cannot print them and spread them out on a desk for review; she cannot make notes on the documents; and she cannot move

the files around into a different order. She is stuck looking at one page at a time over a screen three feet away without a lawyer in the same room. These are textbook untenable conditions. *Stephens*, 447 F. Supp. 3d at 67 (explaining the importance of legal visits and ordering bail during pandemic); *Weigand*, 2020 WL 5887602, at *2 (ordering bail during pandemic because defendant needed ability to review the discovery in complex, document-heavy case). This is no way to prepare for a trial where the government will be asking for a sentence that will imprison her for the rest of her life. Ex.A

This Court has recognized that, after a relatively short time, pretrial detention turns into prohibited, unconstitutional punishment. *United States v. Jackson*, 823 F.2d 4, 7 (2d Cir. 1987) ("grave due process concerns" are implicated by a seven-month period of pretrial detention); *United States v. Melendez-Carrions*, 790 F.2d 984, 1008 (2d Cir. 1986) (Feinberg, J. concurring) ("[G]eneral requirements of due process compel us to draw the line [of permissible pretrial detention] well short of [] eight months."). Under the current conditions, it can hardly be disputed that Ms. Maxwell is being punished, which in itself

requires relief. Add to that the barriers she is facing to preparing her defense and this Court should order her release under 3142(i).

II. The trial court erred in relying on the government's proffer—which comprised nothing but old, anonymous, unconfronted, hearsay accusations—to refuse to set reasonable bail for Ghislaine Maxwell.

The government stressed the strength of its case in seeking detention, highlighting the "strength of the Government's evidence" on page 1 of its application for detention. Ex.A. For support, the government made the circular argument that the evidence is strong because of "the facts set forth in the Indictment." *Id.* at 5. It made the same argument in the reply. Ex.C at 4 (arguing the case is strong because "the superseding indictment makes plain" the allegations against Ms. Maxwell).

Of course, the Indictment is not evidence. *See United States v. Giampino*, 680 F.2d 898, 901 n. 3 (2d. Cir. 1982). Every circuit with published pattern instructions inform juries that they are not to consider the indictment as evidence. *See, e.g.*, Third Circuit ("An indictment is simply a description of the charge(s) against a defendant. It is an accusation only. An indictment is not evidence of anything, and you should not give any weight to the fact that (name) has been indicted

in making your decision in this case."); Fifth Circuit: ("The indictment … is only an accusation, nothing more. It is not proof of guilt or anything else. The defendant therefore starts out with a clean slate."); Sixth Circuit: ("The indictment … does not even raise any suspicion of guilt.").

The government did not provide one single document to the court to back up its claims that the accusers' allegations about events from 1994-97 were truthful. The government has refused to disclose even the names of these accusers. Contrary to its assertions to the lower court, its allegations are not corroborated. Ex.E at 30-33 ("[T]he discovery contains not a single contemporaneous email, text message, phone record, diary entry, police report, or recording that implicates Ms. Maxwell in the 1994-1997 conduct underlying the conspiracy charged in the indictment.").

The government only made these allegations after Epstein's inexplicable death at MCC. Ms. Maxwell was not named in Epstein's indictment as a defendant or a co-conspirator. She was charged as a substitute for Epstein. Reverse engineering a charge many years later because of the main target's death is not the makings of a strong case.

Recognizing this weakness, the Government relies on the statutory maximum penalty to argue that the case is serious and that Ms. Maxwell poses a risk of flight. But the statutory maximum is hardly relevant to determine risk of flight. In the vast majority of federal cases, the statutory maximum penalties are sky-high and are not reflective of the real potential penalties. *See, e.g.*, 18 U.S.C. 1658(b) (statutory maximum of life imprisonment for turning off a light in a lighthouse to expose a ship to danger).

Even if there were evidence to back up the four anonymous accusers, the Second Circuit "require[s] more than evidence of the commission of a serious crime and the fact of a potential long sentence to support a finding of risk of flight." *United States v. Friedman*, 837 F.2d 48, 49-50 (2d. Cir. 1988) (district court's finding that defendant posed a risk of flight was clearly erroneous, despite potential for "long sentence of incarceration"); *Sabhnani*, 493 F.3d at 65, 76-77 (reversing detention order where defendants agreed to significant physical and financial restrictions, despite the fact that they faced a "lengthy term of incarceration").

This is why defendants charged under the same statute in the Southern District of New York are regularly granted bond. *United States v. Hussain*, 18-mj-08262-UA (S.D.N.Y. Oct. 2, 2018) (defendant charged with 18 U.S.C. 2422 violations granted $100,000 personal recognizance bond with home detention, electronic monitoring, and other conditions); *United States v. Buser*, 17-mj-07599-UA (S.D.N.Y. Oct. 19, 2017) (defendant charged with 18 U.S.C. 2422 and 2423 violations granted $100,000 personal recognizance bond, secured by $10,000 cash, with electronic monitoring and other conditions); *United States v. Acosta*, 16-mj-08569-UA (S.D.N.Y Mar. 29, 2016) (denying the Government's detention application after argument and granting defendant charged with 18 U.S.C. 2422 violations $100,000 personal recognizance bond with home detention, electronic monitoring, and other conditions); *United States v. McFadden*, 17-mj-04708-UA (S.D.N.Y. June 22, 2017) (defendant charged with 18 U.S.C. 2422 and 2423 violations granted $250,000 personal recognizance bond, secured by property, with home detention, electronic monitoring and other conditions).

The government shotguns manufactured assertions in support of the supposed flight risk. First, the ridiculous contention that she was hiding before her arrest. In fact, she was living in, and arrested in, her own home in New Hampshire. She was in touch with her lawyers and as the government has to concede, her lawyers were communicating with the government. Ex.D at 27. Despite plenty of opportunities, she had not left the United States since Epstein's arrest, and had been living in the United States for 30 years. She became a U.S. citizen. She lived and worked here for 30 years. The government knew exactly where she was. (FBI New York Assistant Director William Sweeney Jr.: "We'd been discretely keeping tabs on Maxwell's whereabouts as we worked this investigation.")

The fact that she was holed up in her home because she was being relentlessly harassed by the media is not evidence of hiding from the government. In fact, one sensational tabloid put a £10,000 bounty on her. "*Wanted: The Sun is offering a £10,000 reward for information on … Ghislaine Maxwell*," The Sun, November 20, 2019, available at: https://tinyurl.com/3vewtnx3. Anyone facing these unprecedented safety concerns from the media mob would try to keep a low profile. But a low

profile is not flight. Ms. Maxwell could have left the United States had she wanted to flee. She did not want to do that and she did not do that. Instead, she chose to stay here and fight the bogus charges against her. This factor weighs heavily in favor of bond.

The government's next argument is that she has foreign ties and significant assets. But Ms. Maxwell addressed those concerns by renouncing her British and French citizenship and by agreeing to have her and her spouse's assets (other than basic living expenses and legal fees) placed in a new account that will be monitored by a retired federal district judge and former U.S. Attorney who will have authority over them. Ex.I.

Even someone with the government's imagination can't conjure up anything else Ms. Maxwell could do to show that she is serious about staying here to fight the allegations against her. She will agree to whatever condition the court orders and she will take the extraordinary step of renouncing her foreign citizenship. The government cannot explain how Ms. Maxwell could flee. She will have no assets (other than living expenses). She will have no country that will protect her. Her family and friends will be at risk. She will be heavily and

constantly monitored. And of course, she is recognizable around the globe.

The truth is that wealthy men charged with similar or more serious offenses, many of whom have foreign ties, are routinely granted bail so that they can effectively prepare for trial. Bernie Madoff. Harvey Weinstein. Bill Cosby. John Gotti. Marc Dreier. Dominique Strauss-Kahn. Ali Sadr. Adnan Khashoggi. Mahender Sabhnani. The list goes on and on. In each case, the court set reasonable conditions of bond and the defendants appeared, despite similar arguments by the government that the defendant faced serious charges or that the evidence was strong or that he had foreign ties or that he had great wealth. Ms. Maxwell is entitled to the same opportunity as male defendants to prepare her defense.

Even putting aside the pandemic and the current conditions of Ms. Maxwell's confinement, pretrial detention "is an extraordinary remedy" that should be reserved for only a very "limited group of offenders." *United States v. Jackson*, 823 F.2d 4, 8 (2d Cir. 1987). For this reason, a judge may deny a defendant bail "only for the strongest of reasons." *Hung v. United States*, 439 U.S. 1326, 1329 (1978) (Brennan,

J.). The Constitution's "prohibitions on the deprivation of liberty without due process and of excessive bail require careful review of pretrial detention orders to ensure that the statutory mandate [of the Bail Reform Act] has been respected." *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985) (Kennedy, J.). Because the consequence of error – the unjust deprivation of liberty from an individual who is presumed innocent – is contrary to our Constitution, "doubts regarding the propriety of release should be resolved in favor of the defendant." *Id*.

Even where the government is able to prove that an accused is an actual flight risk, pretrial detention generally remains inappropriate. *United States v. Berrios-Berrios*, 791 F.2d 246, 251 (2d Cir. 1986) ("the *presumption* in favor of bail *still* applies where the defendant is found to be a risk of flight") (emphasis added). Where the only question is whether the defendant is a risk of flight, "the law still favors pre-trial release subject to the least restrictive further condition, or combination of conditions, that the court determines will reasonably assure the appearance of the person as required." *Sabhnani*, 493 F.3d at 75.

The Supreme Court has explained that when "the Government has admitted that its only interest is in preventing flight, bail must be set by a court at a sum designed to ensure that goal, and no more."

The government simply has not come close to satisfying its heavy burden of proving that "no conditions" exist that will reasonably assure Ms. Maxwell's presence. It has not articulated with any evidence, let alone specific and credible evidence, how Ms. Maxwell could manage to flee under the proposed bail conditions. Speculation is not permitted. *United States v. Bodmer*, No. 03-cr-947(SAS), 2004 WL 169790 (S.D.N.Y. Jan. 28, 2004) (where government's argument that no conditions could assure defendant's future presence was based, "in large part, on speculation," defendant was released to home confinement with GPS monitoring). We challenge the government to point to a high profile defendant who in the recent past has 1) fled and 2) gotten away with it.

The reality is that defendants with far greater likelihood of conviction than Ms. Maxwell are granted bond and appear in court. Ms. Maxwell should not be treated differently.

CONCLUSION

Ms. Maxwell faces old, anonymous accusations that have never been tested. In any other case, she would have been released long ago. But because of the "Epstein effect," she is being detained and in truly unacceptable conditions. All we are asking for is a chance to defend the case. We respectfully request that Ms. Maxwell be released on reasonable conditions of bail or that the case be remanded for an evidentiary hearing.

Respectfully submitted,

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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 5,185 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(d)(2).

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/s/ David Oscar Markus
David Oscar Markus

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I CERTIFY that a true and correct copy of the foregoing was e-filed this 1st day of April, 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 Motion for Pretrial Release

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Appendix

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I CERTIFY that a true and correct copy of the foregoing was e-filed this 1st day of April, 2021.

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Exhibit A

Doc. 4
The Government's Memorandum in Support of Detention

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
-v.-	:	20 Cr. 330 (AJN)
GHISLAINE MAXWELL,	:	
Defendant.	:	

----------x

THE GOVERNMENT'S MEMORANDUM IN SUPPORT OF DETENTION

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- Of Counsel -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-v.- : 20 Cr. 330 (AJN)

GHISLAINE MAXWELL, :

Defendant. :

----------x

THE GOVERNMENT'S MEMORANDUM IN SUPPORT OF DETENTION

For the reasons set forth herein, the Government respectfully submits that Ghislaine Maxwell, the defendant, poses an extreme risk of flight; that she will not be able to rebut the statutory presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required, 18 U.S.C. § 3142(e)(3)(E); and that the Court should therefore order her detained.

The charges in this case are unquestionably serious: the Indictment alleges that Ghislaine Maxwell, in partnership with Jeffrey Epstein, a serial sexual predator, exploited and abused young girls for years. As a result of her disturbing and callous conduct, Maxwell now faces the very real prospect of serving many years in prison. The strength of the Government's evidence and the substantial prison term the defendant would face upon conviction all create a strong incentive for the defendant to flee. That risk is only amplified by the defendant's extensive international ties, her citizenship in two foreign countries, her wealth, and her lack of meaningful ties to the United States. In short, Maxwell has three passports, large sums of money, extensive international connections, and absolutely no reason to stay in the United States and face the possibility of a lengthy prison sentence.

BACKGROUND

On June 29, 2020, a federal grand jury in the Southern District of New York returned a sealed indictment (the "Indictment") charging the defendant with one count of conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371; one count of enticing a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 2422 and 2; one count of conspiracy to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371; one count of transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. § 2423 and 2; and two counts of perjury, in violation of 18 U.S.C. § 1623.

The charges arise from a scheme to sexually abuse underage girls at Epstein's properties in New York, Florida, and New Mexico, between approximately 1994 and 1997. During that time, Maxwell had a personal and professional relationship with Epstein and was one of his closest associates.

Beginning in at least 1994, the defendant enticed and groomed multiple minor girls to engage in sex acts with Epstein, through a variety of means and methods. In particular, she played a key role in Epstein's abuse of minors by helping Epstein to identify, groom, and ultimately abuse underage girls. As a part of their scheme, the defendant and Epstein enticed and caused minor victims to travel to Epstein's residences in different states, which the defendant knew and intended would result in their grooming for and subjection to sexual abuse.

As the Indictment details, the defendant enticed and groomed minor girls to be abused in multiple ways. For example, she attempted to befriend certain victims by asking them about their lives, taking them to the movies or on shopping trips, and encouraging their interactions with Epstein. She put victims at ease by providing the assurance and comfort of an adult woman who seemingly approved of Epstein's behavior. Additionally, to make victims feel indebted to Epstein,

the defendant would encourage victims to accept Epstein's offers of financial assistance, including offers to pay for travel or educational expenses. 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.

The Indictment further alleges that the defendant lied under oath to conceal her crimes. In 2016, the defendant gave deposition testimony in connection with a civil lawsuit in the Southern District of New York. During the deposition, the defendant was asked questions about her role in facilitating the abuse of minors. The defendant repeatedly lied under oath when questioned about her conduct with minor girls.

ARGUMENT

I. Applicable Law

Under the Bail Reform Act, 18 U.S.C. §§ 3141 et seq., federal courts are empowered to order a defendant's detention pending trial upon a determination that the defendant is either a danger to the community or a risk of flight. 18 U.S.C. § 3142(e). A finding of risk of flight must be supported by a preponderance of the evidence. *See*, *e.g.*, *United States v. Patriarca*, 948 F.2d 789, 793 (1st Cir. 1991); *United States v. Jackson*, 823 F.2d 4, 5 (2d Cir. 1987); *United States v. Chimurenga*, 760 F.2d 400, 405 (2d Cir. 1985). A finding of dangerousness must be supported by clear and convincing evidence. *See*, *e.g.*, *United States v. Ferranti*, 66 F.3d 540, 542 (2d Cir. 1995); *Patriarca*, 948 F.2d at 792; *Chimurenga*, 760 F.2d at 405.

The Bail Reform Act lists four factors to be considered in the detention analysis: (1) the nature and circumstances of the crimes charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the defendant, including the person's "character . . . [and] financial resources"; and (4) the seriousness of the danger posed by the defendant's release. *See*

18 U.S.C. § 3142(g). Evidentiary rules do not apply at detention hearings, and the Government is entitled to present evidence by way of proffer, among other means. *See* 18 U.S.C. § 3142(f)(2); *see also United States v. LaFontaine*, 210 F.3d 125, 130-31 (2d Cir. 2000) (Government entitled to proceed by proffer in detention hearings).

Where a judicial officer concludes after a hearing that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial." 18 U.S.C. § 3142(e)(1). Additionally, where, as here, a defendant is charged with committing an offense involving a minor victim under 18 U.S.C. §§ 2422 or 2423, it shall be presumed, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community. 18 U.S.C. § 3142(e)(3)(E).

II. Discussion

For the reasons set forth below, the defendant presents an extreme risk of flight, and therefore she cannot overcome the statutory presumption in favor of detention in this case. Every one of the relevant factors to be considered as to flight risk – the nature and circumstances of the offense, the strength of the evidence, and the history and characteristics of the defendant – counsel strongly in favor of detention.

A. The Nature and Circumstances of the Offense and the Strength of the Evidence

The "nature and circumstances" of this offense favor detention. As the Indictment alleges, the defendant committed serious crimes involving the sexual exploitation of minors. *See* 18 U.S.C. § 3142(g)(1) (specifically enumerating "whether the offense. . . involves a minor victim" as a factor in bail applications). Indeed, the crimes of enticing and transporting minors for illegal sex

acts are so serious that both crimes carry a statutory presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required. 18 U.S.C. § 3142 (e)(3)(E). The defendant repeatedly engaged in this conduct, targeting girls as young as 14 years old, for a period of years, and involving multiple minors.

These offenses carry significant penalties, and the defendant faces up to 35 years' imprisonment if convicted. The possibility of a substantial sentence is a significant factor in assessing the risk of flight. *See United States v. Moscaritolo*, No. 10 Cr. 4 (JL), 2010 WL 309679, at *2 (D.N.H. Jan. 26, 2010) ("[T]he steeper the potential sentence, the more probable the flight risk is, especially considering the strong case of the government . . . .") (quoting *United States v. Alindato–Perez*, 627 F. Supp. 2d 58, 66 (D.P.R. 2009)). Here, the defendant is facing a statutory maximum of decades in prison. This fact alone would provide a compelling incentive for anyone to flee from prosecution, but the incentive to flee is especially strong for this defendant, who, at age 58, faces the very real prospect of spending a substantial portion of the rest of her life in prison.

The strength of the evidence in this case underscores the risk that the defendant will become a fugitive. As the facts set forth in the Indictment make plain, the evidence in this case is strong. Multiple victims have provided detailed, credible, and corroborated information against the defendant. The victims are backed up contemporaneous documents, records, witness testimony, and other evidence. For example, flight records, diary entries, business records, and other evidence corroborate the victims' account of events. This will be compelling evidence of guilt at any trial in this case, which weighs heavily in favor of detention.

The passage of time between the defendant's conduct and these charges does not counsel otherwise. As an initial matter, all of the conduct is timely charged, pursuant to 18 U.S.C. § 3283, which was amended in 2003 to extend the limitations period for conduct that was timely as of the

date of the amendment,[1] to permit a prosecution at any point during the lifetime of the minor victim. *See United States v. Chief*, 438 F.3d 920, 922-25 (9th Cir. 2006) (finding that because Congress extended the statute of limitations for sex offenses involving minors during the time the previous statute was still running, the extension was permissible); *United States v. Pierre-Louis*, No. 16 Cr. 541 (CM), 2018 WL 4043140, at *1 (S.D.N.Y. Aug. 9, 2018) (same). Moreover, while the conduct alleged in the Indictment may have occurred years ago, the risk of a significant term of incarceration – and thus the motive to flee – is of course only very recent.

Each of these factors – the seriousness of the allegations, the strength of the evidence, and the possibility of lengthy incarceration – creates an extraordinary incentive to flee. And as further described below, the defendant has the means and money to do so.

B. The Characteristics of the Defendant

The history and characteristics of the defendant also strongly support detention. As an initial matter, the defendant's extensive international ties would make it exceptionally easy for her to flee and live abroad. The defendant was born in France and raised in the United Kingdom, where she attended school. Although she became a naturalized citizen of the United States in 2002, she also remains a citizen of the United Kingdom and France. Travel records from United States Customs and Border Protection ("CBP") reflect that she has engaged in frequent international travel, including at least fifteen international flights in the last three years to locations including the United Kingdom, Japan, and Qatar. In addition, CBP records reflect that, consistent with her citizenship status, the defendant appears to possess passports from the United States, France, and the United Kingdom.

[1] Prior to the amendment, the statute of limitations for sexual offenses involving minors ran until the victim reached the age of 25, and as such, all of the relevant charges in the Indictment remained timely as of the 2003 amendment described above.

In addition, the defendant appears to have access to significant financial resources that would enable her flight from prosecution. Based on the Government's investigation to date, the Government has identified more than 15 different bank accounts held by or associated with the defendant from 2016 to the present, and during that same period, the total balances of those accounts have ranged from a total of hundreds of thousands of dollars to more than $20 million. During the same period, the defendant engaged in transfers between her accounts of hundreds of thousands of dollars at a time, including at least several such significant transfers as recently as 2019. For example, the defendant transferred $500,000 from one of her accounts to another in March 2019, and transferred more than $300,000 from one of her accounts to another in July 2019. She has also reported, including as recently as 2019, that she holds one or more foreign bank accounts containing more than a million dollars.

The defendant also appears to have reaped substantial income from a 2016 property sale. In particular, in 2016, the defendant appears to have sold a New York City residence for $15 million through a limited liability company. On or about the date of the sale, amounts totaling more than $14 million were then deposited into an account for which the defendant was listed as the owner. Several days later, more than $14 million was transferred from that account into another account opened in the name of the defendant.[2] In short, the defendant's financial resources appear to be substantial, and her numerous accounts and substantial money movements render her total financial picture opaque and indeterminate, even upon a review of bank records available to the Government.

[2] The Government additionally notes that, somewhat further back in time, in transactions occurring between 2007 and 2011, approximately more than $20 million was transferred from accounts associated with Jeffrey Epstein to accounts associated with the defendant, including amounts in the millions of dollars that were then subsequently transferred back to accounts associated with Epstein.

The defendant's international connections and significant financial means would present a clear risk of flight under normal circumstances, but in this case, the risk of flight is exacerbated by the transient nature of defendant's current lifestyle. In particular, the defendant has effectively been in hiding for approximately a year, since an indictment against Epstein was unsealed in July 2019. Thereafter, the defendant – who had previously made many public appearances – stopped appearing in public entirely, instead hiding out in locations in New England. Moreover, it appears that she made intentional efforts to avoid detection, including moving locations at least twice, switching her primary phone number (which she registered under the name "G Max") and email address, and ordering packages for delivery with a different person listed on the shipping label. Most recently, the defendant appears to have been hiding on a 156-acre property acquired in an all-cash purchase in December 2019 (through a carefully anonymized LLC) in Bradford, New Hampshire, an area to which she has no other known connections.

The defendant appears to have no ties that would motivate her to remain in the United States. She has no children, does not reside with any immediate family members, and does not appear to have any employment that would require her to remain in the United States. Nor does she appear to have any permanent ties to any particular location in the United States. As such, the Government respectfully submits that the defendant will not be able to meet her burden of overcoming the presumption of detention, because there are no bail conditions that could reasonably assure the defendant's continued appearance in this case.

In particular, home confinement with electronic monitoring would be inadequate to mitigate the high risk that the defendant would flee, as she could easily remove a monitoring device. At best, home confinement with electronic monitoring would merely reduce her head start should she decide to flee. *See United States v. Zarger*, No. 00 Cr. 773, 2000 WL 1134364, at *1

(E.D.N.Y. Aug. 4, 2000) (Gleeson, J.) (rejecting defendant's application for bail in part because home detention with electronic monitoring "at best . . . limits a fleeing defendant's head start"); *United States v. Benatar*, No. 02 Cr. 099, 2002 WL 31410262, at *3 (E.D.N.Y. Oct. 10, 2002) (same); *see also United States v. Casteneda*, No. 18 Cr. 047, 2018 WL 888744, at *9 (N.D. Cal. Feb. 2018) (same); *United States v. Anderson*, 384 F. Supp. 2d 32, 41 (D.D.C. 2005) (same).

CONCLUSION

As set forth above, the defendant is an extreme risk of flight. The Government respectfully submits that the defendant cannot meet her burden of overcoming the statutory presumption in favor of detention. There are no conditions of bail that would assure the defendant's presence in court proceedings in this case. Accordingly, any application for bail should be denied.

Dated: New York, New York
July 2, 2020

Respectfully submitted,

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Exhibit B

Doc. 18
Memorandum of Ghislaine Maxwell In Opposition to the Government's Motion for Detention

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

GHISLAINE MAXWELL,

Defendant.

20 Cr. 330 (AJN)

MEMORANDUM OF GHISLAINE MAXWELL
IN OPPOSITION TO THE GOVERNMENT'S MOTION FOR DETENTION

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PRELIMINARY STATEMENT

Ghislaine Maxwell respectfully submits this Memorandum in Opposition to the government's July 2, 2020 Memorandum in Support of Detention ("Gov. Mem.").

It is difficult to recall a recent case that has garnered more public attention than the government's prosecution of Jeffrey Epstein ("Epstein"). In July 2019, Epstein was indicted for offenses relating to sexual misconduct, amid overwhelming media attention focused on the nature of the charges and Epstein's wealth and lifestyle. On August 10, 2019, Epstein died in federal custody, and the media focus quickly shifted to our client—wrongly trying to substitute her for Epstein—even though she'd had no contact with Epstein for more than a decade, had never been charged with a crime or been found liable in any civil litigation, and has always denied any allegations of claimed misconduct. Many of these stories and online posts were threatening and harassing to our client and those close to her.

But sometimes the simplest point is the most critical one: Ghislaine Maxwell is not Jeffrey Epstein. She was not named in the government's indictment of Epstein in 2019, despite the fact that the government has been investigating this case for years. Instead, the current indictment is based on allegations of conduct that allegedly occurred roughly twenty-five years ago. Ms. Maxwell vigorously denies the charges, intends to fight them, and is entitled to the presumption of innocence. Far from "hiding," she has lived in the United States since 1991, has litigated civil cases arising from her supposed ties to Epstein, and has not left the country even once since Epstein's arrest a year ago, even though she was aware of the pending, and highly publicized, criminal investigation. She should be treated like any other defendant who comes before this Court, including as to bail. Under the Bail Reform Act, case law in this Circuit and other circuits, as well as decisions of this Court, Ms. Maxwell should be released on bail, subject to the strict conditions proposed below.

Background. Ms. Maxwell, 58, is a naturalized U.S. citizen who has resided in the United States since 1991. She is also a citizen of France, where she was born, and of the United Kingdom, where she was educated and spent her childhood and formative years. Ms. Maxwell graduated from Oxford University. She moved to the United States in 1991, and has lived in this country ever since that time. Ms. Maxwell has maintained extremely close relationships with her six siblings and her nephews and nieces. They all stood by her in the aftermath of the July 2019 indictment of Epstein and continue to stand by her now. She is especially close to two of her sisters and their children, all of whom reside in the United States. Ms. Maxwell also has numerous friends in the United States who themselves have children, and she is a godmother to many of them. Ms. Maxwell's family and friends have remained committed to her because they do not believe the allegations against her, which do not match the person they have known for decades.

The Government's Position. The government has the burden of persuasion in showing that detention is warranted, and that there are no conditions or combination of conditions that will secure a defendant's appearance in court. In seeking to carry this burden, the government relies on the presumption of detention in 18 U.S.C. § 3142(e)(3)(E), and argues that Ms. Maxwell poses a flight risk because she supposedly lacks ties to the United States; is a citizen of the United Kingdom and France, as well as a citizen of the United States, and has passports for each country; has traveled internationally in the past; and has financial means. And echoing recent media stories, the government speculates that Ms. Maxwell was "hiding" from law enforcement during the pendency of the investigation, even though she has been in regular contact with the government, through counsel, since Epstein's arrest. Finally, the government argues that the nature and circumstances of the offense and the weight of the evidence warrant

detention. Importantly, in contrast with the bail position it took with Epstein, the government does not and cannot assert that Ms. Maxwell presents a danger to the community under Section 3142(g)(4).

Ms. Maxwell's Response. The Court should exercise its discretion to grant bail to Ms. Maxwell, on the strict conditions proposed below (or as modified by the Court), for two compelling reasons.

First, the COVID-19 crisis and its impact on detained defendants warrants release. As this Court has noted, the COVID-19 pandemic represents an unprecedented health risk to incarcerated individuals, and COVID-19-related restrictions on attorney communications with pretrial detainees significantly impair a defendant's ability to prepare her defense. Simply put, under these circumstances, if Ms. Maxwell continues to be detained, her health will be at serious risk and she will not be able to receive a fair trial. (*See infra* Section I, pages 5 to 9).

Second, the Court should grant bail because the government has not met its burden under the Bail Reform Act and controlling case law. The presumption relied on by the government may be rebutted, and is so here. Ms. Maxwell has strong ties to the community: she is a U.S. citizen and has lived in this country for almost 30 years; she ran a non-profit company based in the United States until the recent media frenzy about this case forced her to wind it down to protect her professional colleagues and their organizations; and she has very close ties with family members and friends in New York and the rest of the country. Nor does her conduct indicate that she is a flight risk: she has no prior criminal record; has spent years contesting civil litigation arising from her supposed ties to Epstein; and has remained in the United States from the time of Epstein's arrest until the present, with her counsel in regular contact with the government. She did not flee, but rather left the public eye, for the entirely understandable

purpose of protecting herself and those close to her from the crush of media and online attention and its very real harms—those close to her have suffered the loss of jobs, work opportunities, and reputational damage simply for knowing her. The government's remaining arguments—about Ms. Maxwell's passports, citizenship, travel and financial means— also fail because they would require that every defendant with multiple citizenship and financial means be denied bail, which is simply not the law. Finally, as discussed below, the government's position regarding the nature and circumstances of the offense and weight of its evidence, which relates to alleged conduct that is roughly twenty-five years old, is not persuasive and does not alter the bail analysis. (*See infra* Section II, pages 9 to 21).

Proposed Bail Conditions. In light of the above, we propose the following bail conditions, which are consistent with those that courts in this Circuit have imposed in analogous situations: (i) a $5 million personal recognizance bond, co-signed by six financially responsible people, all of whom have strong ties to Ms. Maxwell, and secured by real property in the United Kingdom worth over $3.75 million; (ii) travel restricted to the Southern and Eastern Districts of New York; (iii) surrender of all travel documents with no new applications; (iv) strict supervision by Pretrial Services; (v) home confinement at a residence in the Southern District of New York with electronic GPS monitoring; (vi) visitors limited to Ms. Maxwell's immediate family, close friends and counsel; (vii) travel limited to Court appearances and to counsel's office, except upon application to Pretrial Services and the government; and (viii) such other terms as the Court may deem appropriate under Section 3142.

The Bail Reform Act does not discard the presumption of innocence; Ms. Maxwell is entitled to that presumption here, as she is in all aspects of this case. *See* 18 U.S.C. § 3142(j) ("Nothing in this section [3142] shall be construed as modifying or limiting the presumption of

innocence."). The government has failed to meet its burden of establishing that Ms. Maxwell presents an "actual risk of flight" and must be detained under Section 3142. The strict bail conditions outlined above are appropriate under the circumstances and are the "least restrictive" set of conditions that will "reasonably assure" Ms. Maxwell's appearance in Court, without the health and access to counsel risks inherent in the government's request that Ms. Maxwell be detained pending trial. *See* 18 U.S.C. § 3142 (c)(1)(B). Under the controlling legal standards, Ms. Maxwell should be released on bail.

ARGUMENT

There are two compelling reasons why the Court should order Ms. Maxwell's release on bail pursuant to the strict conditions she has proposed:

First, Ms. Maxwell will be at significant risk of contracting COVID-19 if she is detained, and she will not be able to meaningfully participate in the preparation of her defense due to the restrictions that have been placed on attorney visits and phone calls in light of the pandemic.

Second, the government has failed to carry its burden under 18 U.S.C. § 3142 that no combination of conditions can be imposed that will reasonably assure Ms. Maxwell's presence in court.

I. The Conditions Created by the COVID-19 Pandemic Mandate the Release of Ms. Maxwell.

Impact of COVID-19 on the Prison Population. We submit that the conditions created by the COVID-19 pandemic compel Ms. Maxwell's release pursuant to appropriate bail conditions. Four months ago, this Court held in *United States v. Stephens*, 15-CR-95 (AJN), 2020 WL 1295155 (S.D.N.Y. Mar. 19, 2020), that COVID-19 is an "unprecedented and extraordinarily dangerous" threat that justifies release on bail. *Id*. at *2. In that case, the defendant, who had no underlying medical conditions, filed an emergency motion for reconsideration of the Court's

prior detention order based in part on the risks brought on by COVID-19. At the time, COVID-19 had only begun to take its devastating toll on New York, and there was no known outbreak in the prison population. Nevertheless, the Court noted that "inmates may be at a heightened risk of contracting COVID-19 should an outbreak develop," and, based in part on this changed circumstance, ordered the defendant released. *Id*.

Since the Court issued its opinion in *Stephens*, the COVID-19 risks to inmates have increased dramatically, as there have been significant outbreaks of COVID-19 in correctional facilities. In the last month alone, the number of prison inmates known to have COVID-19 has doubled to 68,000, and prison deaths tied to COVID-19 have increased by 73 percent.[1] Indeed, as of July 2, 2020, nine of the ten largest known clusters of the coronavirus in the United States are in federal prisons and county jails.[2] As this Court noted last month, "the 'inability [of] individuals to socially distance, shared communal spaces, and limited access to hygiene products' [in correctional facilities] make community spread all but unavoidable." *United States v. Williams-Bethea*, No. 18-CR-78 (AJN), 2020 WL 2848098, at *5 (S.D.N.Y. June 2, 2020) (citation and internal quotation marks omitted). The risks are further enhanced by the possibility of a second wave of coronavirus cases.[3]

In particular, COVID-19 has begun to spread through the Metropolitan Detention Center (MDC), where Ms. Maxwell has been housed since the Bureau of Prisons (BOP) transferred her there on July 6, 2020. According to the MDC's statistics, as of April 3, 2020, two inmates and

[1] Timothy Williams, et al., *Coronavirus Cases Rise Sharply in Prisons Even as They Plateau Nationwide*, N.Y. Times, available at https://www.nytimes.com/2020/06/16/us/coronavirus-inmates-prisons-jails.html (last updated June 30, 2020).

[2] *Coronavirus in the U.S: Latest Map and Case Count,* N.Y. Times, available at https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#clusters (last updated July 2, 2020).

[3] *See, e.g.,* Audrey Cher, *WHO's Chief Scientist Says There's a "Very Real Risk" of a Second Wave of Coronavirus As Economies Reopen*, CNBC, June 9, 2020, available at https://www.cnbc.com/2020/06/10/who-says-theres-real-risk-of-second-coronavirus-wave-as-economies-reopen.html.

five staff had tested positive; by June 30, 2020, those numbers had risen to 14 and 41, respectively.[4] The increased spread among prisons means that the COVID-19 risks that were present in the *Stephens* case four months ago are far more serious for Ms. Maxwell now and mandate her release.

Impact of COVID-19 on the Ability to Prepare the Defense. The *Stephens* opinion provides yet another independent basis that, we submit, requires Ms. Maxwell's release: if she is detained, her ability to meet with her attorneys and prepare for her defense will be significantly impaired and she will not be able to meaningfully participate in the preparation of her defense.

In *Stephens*, the Court found that this factor required the defendant's release under 18 U.S.C. § 3142(i), which provides for temporary release based on a determination that such release is "necessary for preparation of the person's defense." *Stephens,* 2020 WL 1295155 at *3. The Court noted that the spread of COVID-19 had compelled the BOP to suspend all in-person visits, including legal visits, except as allowed on a case-by-case basis. *Id.* at *3. That suspension persists to this day.[5] In a case such as this, which will require assessing evidence relating to events that occurred approximately twenty-five years ago, including documents and personal recollections, numerous in-person meetings between counsel and Ms. Maxwell will be critical to the preparation of the defense. The recent resurgence of the pandemic calls into question whether these meetings will ever be able to happen in advance of her trial. As in

[4] *See* April 3, 2020 Report from the BOP regarding the Metropolitan Detention Center and Metropolitan Correctional Center ("MDC and MCC Report"), available at https://img.nyed.uscourts.gov/files/reports/bop/20200403_BOP_Report.pdf; and June 30, 2020 MDC and MCC Report, available at https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200630_071147.pdf.

[5] *See* BOP COVID-19 Modified Operations Plan, available at https://www.bop.gov/coronavirus/covid19_status.jsp.

Stephens, Ms. Maxwell's inability to meet with her attorneys while this policy is in effect constitutes a "compelling reason" requiring her release. *Stephens,* 2020 WL 1295155 at *3.[6]

Even speaking by phone with Ms. Maxwell presents daunting challenges due to COVID-19-related protocols requiring at least 72 hours' notice to schedule a call, unless it is urgent, in which case counsel can email a request to the MDC. As counsel learned this past week, however, even an urgent call request does not mean the call will take place in the time required. At approximately 5:30 p.m. on July 6, 2020, the Court ordered us to confer with Ms. Maxwell about waiving her physical presence at the arraignment, initial appearance, and bail hearing, and ordered counsel for both sides to jointly report back by 9:00 p.m. that night with a proposed date and time for these proceedings. We promptly emailed the MDC to request an urgent call, making specific reference to the Court's Order, but were not connected with Ms. Maxwell until 9:00 p.m. There will no doubt be other orders of the Court with no guarantees we will be able to reach our client in time if she is detained.[7] In addition, during this past week, Ms. Maxwell has not been able to physically review documents and has had limited access to writing materials. The prohibition on in-person visits means we must read to her any documents requiring her review, and she has virtually no ability to take notes. The age of the allegations in this case compound these problems. Under the current circumstances, Ms. Maxwell cannot review

[6] Since the Court issued its opinion in *Stephens*, numerous other courts in this District have ordered defendants released on bail, over the government's objection, due to the pandemic and its impact on the defendant's ability to prepare for trial. *See, e.g.*, *United States v. Carrillo-Villa*, 20-MJ-3073 (SLC) (S.D.N.Y. Apr. 6, 2020) (releasing undocumented defendant in drug conspiracy case because of inability to meaningfully communicate with lawyer and risk of COVID-19); *United States v. Hudson*, 19-CR-496 (CM) (S.D.N.Y. Mar. 19, 2020) (releasing defendant in drug conspiracy, loansharking, and extortion case, whose two prior, pre-COVID-19 bail applications were denied, because of inability to prepare for upcoming trial and risk of COVID-19); *United States v. Chandler*, 19-CR-867 (PAC), 2020 WL 1528120, at *1 (S.D.N.Y. Mar. 31, 2020) (releasing defendant on felon in possession case, with prior manslaughter conviction, due to inability to prepare for trial due to COVID-19 restrictions).

[7] The government has recently worked with the BOP to set up a standing call between counsel and Ms. Maxwell each morning until the initial appearance to facilitate attorney-client communications. While we greatly appreciate these efforts, they are a short-term patch to a persistent problem that shows no signs of abating. Nor would it be appropriate, on an ongoing basis, for the prosecutors to be involved in and dictate the date and time of our communications with our client in connection with the preparation of our defense.

documents and other evidence from approximately twenty-five years ago and meaningfully assist in the preparation of her defense. These restrictions are additional "compelling reasons" justifying her release. *See id.*[8]

II. The Government Has Not Carried Its Burden Under 18 U.S.C. § 3142.

The grave concerns raised by the current COVID-19 crisis notwithstanding, Ms. Maxwell must be released because she has met her limited burden of production showing that she does not pose a flight risk, and the government has entirely failed to demonstrate that no release condition or combination of conditions exist that will reasonably assure Ms. Maxwell's presence in court.

A. Applicable Law

As the Supreme Court has recognized, "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno,* 481 U.S. 739, 755 (1987). Pretrial detention is appropriate only where "no condition or combination of conditions will reasonably assure the appearance of the [defendant]." *United States v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007) (quoting 18 U.S.C. § 3142(e)). The Bail Reform Act provides that a court *"shall* order the pretrial release" of the defendant (18 U.S.C. § 3142(b)) (emphasis added), but may impose bail conditions if "such release will not reasonably assure the appearance" of the defendant in court. 18 U.S.C. § 3142(c). Where conditions are necessary, such release shall be "subject to the *least restrictive* . . . set of conditions that [the court] determines will reasonably assure the appearance of the person as required." 18 U.S.C. § 3142(c)(1)(B) (emphasis added). Consequently, "[u]nder this statutory scheme, 'it is only a limited group of offenders who should be denied bail pending trial.'" *Sabhnani*, 493 F.3d at 75 (citation and internal quotation marks omitted).

[8] *See also* Letter of Sean Hecker to Hon. Margo K. Brodie (July 8, 2020), *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.,* No. 19 Civ. 660 (E.D.N.Y.) (Doc. No. 78) (detailing absence of in-person visitation, highly limited VTC and telephone call capacity, and issues pertaining to legal mail and legal documents).

The government bears a dual burden in seeking pre-trial detention. First, the government must show "by a preponderance of the evidence that the defendant . . . presents an *actual* risk of flight." *Sabhnani*, 493 F.3d at 75 (emphasis added). If the government is able to satisfy this burden, it must then "demonstrate by a preponderance of the evidence that no condition or combination of conditions could be imposed on the defendant that would reasonably assure his presence in court." *Id.*

In determining whether there are conditions of release that will reasonably assure the appearance of the defendant, the court must consider (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. 18 U.S.C. § 3142(g).

In this case, unlike in the Epstein case, the government does not contend that Ms. Maxwell poses any danger to the community, and therefore the fourth factor does not apply.

The Bail Reform Act contains a rebuttable presumption, applicable based on certain of the crimes charged here, that no conditions will reasonably assure against flight. *See* 18 U.S.C. § 3142(e)(3)(E). In cases where this presumption applies, the "defendant bears a limited burden of production—not a burden of persuasion—to rebut that presumption by coming forward with evidence that [she] does not pose . . . a risk of flight." *See United States v. English*, 629 F.3d 311, 319 (2d Cir. 2011) (quotation omitted). This rebuttable presumption can be readily satisfied, *United States v. Conway*, No. 4–11–70756 MAG (DMR), 2011 WL 3421321, at *2 (N.D. Cal. Aug. 3, 2011), and "[a]ny evidence favorable to a defendant that comes within a category listed in § 3142(g) can affect the operation" of the presumption. *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986); *see also United States v. Mattis*, No. 20-1713,

2020 WL 3536277, at *4–5 (2d Cir. June 30, 2020). Although the presumption "remains a factor to be considered" even after the defendant has met her burden of production, "[a]t all times . . . the government retains the ultimate burden of persuasion by . . . a preponderance of the evidence" that the defendant poses a flight risk that cannot be addressed by any bail conditions. *English*, 629 F.3d at 319 (citation and internal quotation marks omitted); *see also United States v. Deutsch*, No. 18-CR-502 (FB), 2020 WL 3577398, at *5 (E.D.N.Y. July 1, 2020). And regardless of the presence of the presumption or the nature of the charges alleged, "[n]othing in this section [3142] shall be construed as modifying or limiting the presumption of innocence." 18 U.S.C. § 3142(j); *see also United States v. Crowell*, No. 06-CR-291E(F), 2006 WL 3541736, at *3 (W.D.N.Y. Dec. 7, 2006) (those charged with crimes involving minors "continue to enjoy the presumption of innocence in setting conditions of release.").

B. Ms. Maxwell Has Rebutted the Presumption That She Poses a Flight Risk, and the Government Has Not Carried Its Burden That No Combination of Conditions Can Be Imposed To Reasonably Assure Her Presence In Court

The government has not carried its burden of establishing that no set of conditions will reasonably assure Ms. Maxwell's appearance in court. As set forth below, Ms. Maxwell's personal history, her family and other ties to this country, and her conduct prior to her arrest easily rebut the presumption that she presents a risk of flight. For these same reasons, the government cannot establish that the strict bail conditions she proposes, which are consistent with a number of cases in this Circuit in which courts have ordered release, will not "reasonably assure" her presence in court. Accordingly, the Court should order Ms. Maxwell released pursuant to her proposed conditions.

1. Ms. Maxwell's Personal History and Characteristics Demonstrate That She Is Not a Flight Risk

a. Ms. Maxwell Has No Prior Criminal Record, and Has Significant Ties to the United States and the New York Region

Ms. Maxwell's history and characteristics do not "strongly support detention," as the government contends (Gov. Mem. at 6), but instead demonstrate that she is firmly rooted in this country and that her appearance can be reasonably assured with appropriate bail conditions. Ms. Maxwell has no criminal record, which includes the approximately twenty-five-year period from the time the conduct alleged in the indictment took place to the present. Ms. Maxwell also has significant ties to the United States. She has lived in this country for almost 30 years and became a naturalized U.S. citizen in 2002. Ms. Maxwell also has strong family ties to this country. Two of her sisters, who have agreed to co-sign her bond, live in the United States, and they have several children who are U.S.-born citizens. Ms. Maxwell is very close with her sisters and maintains regular contact with them, as well as with her nieces and nephews. Ms. Maxwell also has numerous close friends and professional colleagues who reside in this country. In sum, the United States has been Ms. Maxwell's home for decades.

b. Ms. Maxwell Has Actively Litigated Civil Cases in this District and Has Not Left the United States Since Epstein's 2019 Arrest

Ms. Maxwell has never once attempted to "hide" from the government or her accusers, and has never shown any intent to leave the country. To the contrary, Ms. Maxwell has always vehemently denied that she was involved in illegal or improper conduct related to Epstein, and her conduct has been entirely consistent with someone who fully intends to remain in this country and fight any allegations brought against her. For example, since 2015, and continuing through today, Ms. Maxwell has actively litigated several civil

cases related to Epstein in the Southern District of New York and has sat for depositions in those cases. Similarly, throughout the course of the criminal investigation of this case, which has been publicly reported on for nearly a year, Ms. Maxwell has remained in the United States. Indeed, on July 7, 2019, the day after Epstein's arrest, Ms. Maxwell reached out to the prosecutors in the Southern District of New York, through counsel, and maintained regular contact with them right up to the point of her arrest.

The government's broad assertion that Ms. Maxwell has engaged in "frequent international travel" in the last three years (Gov. Mem. at 6) obscures the critical point: *she has not left the country even once since Epstein's arrest*. Ms. Maxwell's decision to remain in the United States after Epstein's arrest and subsequent death in August 2019 is particularly significant because any incentive she may have had to flee would have been even more acute at that time. Within days of Epstein's death, a steady stream of press articles began turning the public's attention to Ms. Maxwell—wrongly substituting her for Epstein—and speculating that she had become the prime target of the government's investigation.[9] Adding even more fuel to this fire, several of the women claiming to be victims of Epstein's abuse began publicly calling for her immediate arrest and prosecution. Despite the increasing risk of being criminally charged, and the media firestorm that was redirected toward her after Epstein's death, and despite having ample opportunity to leave the country, Ms. Maxwell stayed in the United States for almost an entire year until she was arrested. These actions weigh heavily in favor of release. *See United States v. Friedman*,

[9] *See, e.g.*, *Spotlight turns on Jeffrey Epstein's British socialite 'fixer' Ghislaine Maxwell after his suicide – but will she be prosecuted?*, Daily Mail (Aug. 10, 2019), https://www.dailymail.co.uk/news/article-7344765/Spotlight-turns-Jeffrey-Epsteins-fixer-Ghislaine-Maxwell-suicide.html; *Ghislaine Maxwell: the woman accused of helping Jeffrey Epstein groom girls*, The Guardian (Aug. 12, 2019), https://www.theguardian.com/us-news/2019/aug/12/ghislaine-maxwell-woman-accused-jeffrey-epstein-groom-girls; *British socialite Ghislaine Maxwell in spotlight after Epstein's apparent suicide*, NBC News (Aug. 12, 2019), https://www.nbcnews.com/news/us-news/british-socialite-ghislaine-maxwell-spotlight-after-epstein-s-apparent-suicide-n1041111.

837 F.2d 48, 49-50 (2d Cir. 1988) (overturning district court's decision that defendant posed a flight risk based in part on the ground that the defendant took "no steps" to flee jurisdiction in three-week period between execution of search warrant at home and arrest); *United States v. DiGiacomo*, 746 F. Supp. 1176, 1179-80 (D. Mass. 1990) (concluding defendants did not present a flight risk because each of them "for three years knew there was substantial evidence of the likely charges against them and did not attempt to flee before indictment"). 837 F.2d 48, 49-50 (2d Cir. 1988) (overturning district court's decision that defendant posed a flight risk based in part on the ground that the defendant took "no steps" to flee jurisdiction in three-week period between execution of search warrant at home and arrest); *United States v. DiGiacomo*, 746 F. Supp. 1176, 1179-80 (D. Mass. 1990) (concluding defendants did not present a flight risk because each of them "for three years knew there was substantial evidence of the likely charges against them and did not attempt to flee before indictment").

f

Indeed, the absence of any allegation by the government that Ms. Maxwell was taking steps to leave the country at the time of her arrest is conspicuous. The government has offered no proof that she was making plans to leave the country. In fact, had the government alerted her counsel that she was about to be arrested, we would have arranged for Ms. Maxwell's prompt, voluntary surrender. Instead, the government arrested Ms. Maxwell without warning on the day before the July 4th holiday, thus ensuring that she would be in federal custody on the one-year anniversary of Epstein's arrest.

c. Ms. Maxwell's Actions to Protect Herself From Intrusive Media Coverage and Death Threats Do Not Demonstrate an Intent to Flee

Furthermore, the steps Ms. Maxwell took to leave the public eye after Epstein's arrest are not indicative of a risk of flight. The government notes that Ms. Maxwell dropped

out of public view after Epstein's arrest, which the government seeks to portray as "hiding" from the law. The government further argues that she has taken several steps to avoid detection, including moving residences and switching her phone and email address. (Gov. Mem. at 8). But Ms. Maxwell did not take these steps to hide from law enforcement or evade prosecution. Instead, they were necessary measures that Ms. Maxwell was forced to

take to protect herself, her family members, her friends and colleagues, and their children, from unrelenting and intrusive media coverage, threats, and irreparable reputational harm.

Ever since Epstein's arrest, Ms. Maxwell has been at the center of a crushing onslaught of press articles, television specials, and social media posts painting her in the most damning light possible and prejudging her guilt. The sheer volume of media reporting mentioning Ms. Maxwell is staggering. Since Epstein's arrest, she has been mentioned in literally thousands of media publications, news reports, and other online content. The media attention also spawned a carnival-like atmosphere of speculation about her whereabouts. In November 2019, the British tabloid, *The Sun*, even offered a £10,000 bounty for information about Ms. Maxwell's location. A headline reminiscent of a Wild West wanted poster read: "WANTED: The Sun is offering a £10,000 reward for information on Jeffrey Epstein pal Ghislaine Maxwell."[10] And in the days leading up to her arrest, there was a deluge of media reports (all untrue) claiming that Ms. Maxwell was hiding out in an apartment in Paris to avoid questioning by the FBI.[11] She has seen helicopters flying over her home and reporters hiding in the bushes. Indeed, since Ms. Maxwell's arrest on July 2, 2020, her counsel has been flooded with hundreds of media inquiries and solicitations from members of the public.

The "open season" declared on Ms. Maxwell after Epstein's death has come with an even darker cost – she has been the target of alarming physical threats, even death threats, and has had to hire security guards to ensure her safety. The media feeding frenzy, which has only intensified in recent months, has also deeply affected her family and friends. Some of Ms. Maxwell's closest friends who had nothing whatsoever to do with Epstein have lost their jobs or

[10] *See* https://www.the-sun.com/news/74018/the-sun-is-offering-a-10000-reward-for-information-on-jeffrey-epstein-pal-ghislaine-maxwell/.

[11] *See, e.g.*, https://www.dailymail.co.uk/news/ article-8444137/Jeffrey-Epsteins-fugitive-madam-Ghislaine-Maxwell-hiding-luxury-Paris.html.

suffered severe professional and reputational damage simply by being associated with her. Ms. Maxwell therefore did what any responsible person would do – she separated herself from everyone she cares about and removed herself from the public eye in order to keep herself and her friends out of harm's way.[12]

Lacking any evidence required under the governing standard that Ms. Maxwell presents an "actual risk of flight," *Sabhnani*, 493 F.3d at 75, the government's flight risk argument is reduced to the following: Ms. Maxwell is a woman of means who has foreign citizenship and has traveled internationally in the past, and who now faces serious charges. But if that were sufficient, then virtually every defendant with a foreign passport and any meaningful amount of funds would need to be detained as a flight risk. *See Hung v. United States* 439 U.S. 1326, 1329 (1978) (to detain based on risk of flight, government must show more than "opportunities for flight," and instead must establish an "inclination on the part of [the defendant] to flee"). That is not what the Bail Reform Act requires. Indeed, courts in this Circuit and elsewhere commonly find that bail conditions can adequately address risk of flight, even where individuals have foreign citizenship and passports or otherwise substantial foreign connections, and financial means. *See, e.g.*, *Sabhnani*, 493 F.3d at 66; *United States v. Hansen*, 108 F. App'x 331 (6th Cir. 2004); *United States v. Hanson*, 613 F. Supp. 2d 85 (D.D.C. 2009); *United States v. Bodmer*, No. 03-cr-947(SAS), 2004 WL 169790, at *2-3 (S.D.N.Y. Jan. 28. 2004); *United States v. Karni*, 298 F. Supp. 2d 129 (D.D.C. 2004); *United States v. Kashoggi*, 717 F. Supp. 1048, 1050-52 (S.D.N.Y. 1989).

Finally, the ongoing travel restrictions caused by the COVID-19 pandemic would pose a significant hurdle to Ms. Maxwell's ability to flee the United States, particularly to

[12] The media spotlight has also drawn out people who claim to speak for Ms. Maxwell, and even purport to have had direct communications with her, but who, in fact, have no ties to Ms. Maxwell whatsoever. One such person has even given numerous television interviews on news shows in the United Kingdom.

France and the United Kingdom.[13] Notably, two weeks ago, this Court recognized in *United States v. Abdellatif El Mokadem*, No. 19-CR-646 (AJN), 2020 WL 3440515 (S.D.N.Y. June 23, 2020) that "concerns regarding risk of flight are mitigated by the ongoing [COVID-19] pandemic, which has understandably curtailed travel across the country, and, indeed, around the world." *Id.* at *1. In that case, despite finding detention to be warranted on two prior occasions, the Court concluded that the government could no longer establish flight risk and ordered the defendant released pending sentencing. *Id*. ("Taking account of the COVID-19 pandemic, which had not yet reached this country when the Court last considered Defendant's custody status, the balance now clearly and convincingly tips in Defendant's favor ....."). Consideration of this factor weighs heavily in favor of release on the proposed bail conditions here.

2. The Nature and Circumstances of the Charges and the Weight of the Evidence Militate in Favor of Bail

The Defense Has Rebutted the Presumption Relating to Certain of the Charges. The government relies on the statutory presumption of detention applicable to offenses involving minor victims. (Gov. Mem. at 4-5.) But unlike the position it took with Epstein, the government does not contend that Ms. Maxwell poses any danger to the community, or that she suffers from compulsive or addictive sexual proclivities. *See United States v. Epstein*, 425 F. Supp. 3d 306, 314-15 (S.D.N.Y. 2019). Even according to the indictment, Ms. Maxwell's alleged participation in offenses involving minors ended in 1997. Here, the only

[13] *See, e,g.*, *E.U. Formalizes Reopening, Barring Travelers From U.S.*, N.Y. Times, (June 30, 2020), available at https://www.nytimes.com/2020/06/30/world/europe/eu-reopening-blocks-us-travelers.html (confirming that the European Union will not open its borders to travelers from the United States, and "[t]ravelers' country of residence, not their nationality, will be the determining factor for their ability to travel to countries in the European Union"); *England Drops Its Quarantine for Most Visitors, but Not Those From the U.S.*, N.Y. Times (July 3, 2020), available at https://www.nytimes.com/2020/07/03/world/europe/britain-quarantine-us-coronavirus.html (confirming that England will leave mandatory 14-day quarantine restrictions in place for travelers coming from the United States).

applicable presumption relates to risk of flight, and, as noted, Ms. Maxwell has rebutted that presumption based on her ties to the United States, her decision to remain in this country after Epstein's arrest, and all of the other reasons discussed above. This Court should follow other courts in this Circuit and elsewhere that have found that defendants rebutted the presumption and imposed appropriately strict bail conditions in cases involving alleged offenses against minors. *See Deutsch*, 2020 WL 3577398, at *5-6; *United States v. Veres*, No. 3:20-CR-18-J-32JBT, 2020 WL 1042051, at *3-4 (M.D. Fla. Mar. 4, 2020); *Conway*, 2011 WL 3421321, at *4-5.

The Impact of the Potential Penalties Is Overstated. The government asserts that detention is warranted because of the potential for a long sentence in this case. (Gov. Mem. at 4-5.) This oversimplifies the governing standard. Although the severity of potential punishment is a relevant consideration, the Second Circuit "require[s] more than evidence of the commission of a serious crime and the fact of a potentially long sentence to support a finding of risk of flight." *Friedman*, 837 F.2d at 49-50 (district court's finding that defendant posed a risk of flight was clearly erroneous, despite potential for "long sentence of incarceration"); *see also Sabhnani*, 493 F.3d at 65, 76-77 (reversing detention order where defendants agreed to significant physical and financial restrictions, despite the fact that they faced a "lengthy term of incarceration"). Accordingly, the asserted potential for a long sentence does not meet the government's burden of persuasion.[14]

[14] The government relies on *United States v. Alindato-Perez*, 627 F. Supp. 2d 58, 66 (D.P.R. 2009), cited approvingly by *United States v. Moscaritolo*, No. 10 Cr. 4 (JL), 2010 WL 309679, at *2 (D.N.H. Jan. 26, 2010) for the proposition that "[t]he steeper the potential sentence, the more probable the flight risk is, especially considering the strong case of the government . . . ." (Gov. Mem. at 5.) But *Alindato-Perez* is easily distinguished on its facts from Ms. Maxwell's case. *Alindato-Perez* was a narcotics case that did not involve 20-year old conduct as here, but instead involved a conspiracy that "continu[ed] until the date of the indictment." 627 F. Supp. 2d at 60-61. The evidence included eleven "clearly incriminating video tapes" and testimony from various cooperating witnesses, and the defendant faced a 10-year mandatory minimum sentence. *Id*. at 61-64. These factors are not present in this case.

Moreover, the government overstates the potential for Ms. Maxwell to spend "decades in prison" if she is convicted. (Gov. Mem. at 5.) In fact, her likely total exposure even if she were convicted on all counts is 10 years, assuming the Court were to follow the traditional practice in this District and impose concurrent sentences. Although a 10-year sentence would be significant, it is a far cry from the government's forecast, further demonstrating that the government has not met its burden of showing Ms. Maxwell is an actual risk of flight.

The Government's Case Is Subject to Significant Challenges. In evaluating the strength of the government's case, we note that Ms. Maxwell intends to mount several legal challenges to the indictment, including that: (i) this prosecution is barred by Epstein's September 24, 2007 non-prosecution agreement with the Department of Justice, which covers "any potential co-conspirators of Epstein"; (ii) the conspiracy, enticement of minors, and transporting of minors charges are time-barred and otherwise legally flawed; and (iii) the two perjury charges are subject to dismissal on several legal grounds.[15] In addition, as we understand from the face of the indictment, the government's case is based primarily on the testimony of three individuals about events that allegedly occurred roughly 25 years ago between 1994 and 1997. It is inherently more difficult to prosecute cases relating to decades-old conduct. These issues further call into question the strength of the government's case, and provide an independent basis justifying release on bail.

[15] The defense is also considering whether the government's comments in connection with this case conform to Local Criminal Rule 23.1, and whether to seek appropriate relief from the Court.

3. The Proposed Bail Package Is More Than Adequate to Secure Ms. Maxwell's Presence

For the reasons stated above, the Court should release Ms. Maxwell because the circumstances created by the COVID-19 pandemic will greatly increase her personal risk and prevent her from meaningfully participating in her defense, and because the government has not carried its burden under 18 U.S.C. § 3142. We respectfully submit that the proposed bail package represents the "least restrictive" set of conditions that will reasonably ensure Ms. Maxwell's presence in court. 18 U.S.C. § 3142(c)(1)(B).

The package includes six co-signers—Ms. Maxwell's siblings, relatives and friends—many of whom reside in the United States, and all of whom continue to support her despite the unrelenting media attacks that Ms. Maxwell and they, themselves, have suffered as a result of this case. Each of them has voluntarily agreed to assume responsibility for an extremely large bond amount of $5 million, in order to secure her appearance. The bond is also to be secured by real property in the United Kingdom worth roughly $3.75 million. The package also includes stringent travel and physical restrictions, including surrendering all passports and no new travel applications, travel restricted to the Southern and Eastern Districts of New York, and home detention with electronic GPS monitoring. Ms. Maxwell, for personal reasons, will continue to need security guards to protect her upon release. Under the circumstances, if the Court requires it, the security guards could report to Pretrial Services.[16]

[16] In *United States v. Boustani*, 932 F.3d 79 (2d Cir. 2019), the Second Circuit curtailed the circumstances under which a court can grant pretrial release to a defendant on the condition that the defendant pays for private armed security guards. *Boustani*, nevertheless, held that a defendant may be released on such a condition if the defendant "is deemed to be a flight risk primarily *because of* his wealth. In other words, a defendant may be released on such a condition only where, *but for* his wealth, he would not have been detained." *Id*. (emphasis in original). We submit that a similarly situated defendant who, like Ms. Maxwell, had no prior criminal record, significant ties to the United States, and a demonstrated lack of intent to flee the country, as well as numerous, supportive co-signers, but who did

Ms. Maxwell has a number of other family members and friends who, under normal circumstances, would also co-sign and secure her bond. She is not relying on them in connection with this bail application in an effort to safeguard their privacy and protect them and their families from harm.

The proposed bail conditions are consistent with those approved by courts in this Circuit in other high-profile cases, and should be approved here. *See, e.g.*, *United States v. Esposito*, 309 F. Supp. 3d 24, 32 (S.D.N.Y. 2018) (alleged leader of Genovese crime family who was charged with racketeering and extortion granted release subject to conditions), *aff'd*, 749 F. App'x 20 (2d Cir. 2018); *United States v. Dreier*, 596 F. Supp. 2d 831, 832 (S.D.N.Y. 2009) (Marc Dreier, accused of "colossal criminality" and alleged to be a "high flight risk," granted release subject to conditions); *United States v. Madoff*, 586 F. Supp. 2d 240, 243 (S.D.N.Y. 2009) (Bernie Madoff, charged with "largest Ponzi scheme ever" and alleged to be a "serious risk of flight," granted release subject to conditions).

not have Ms. Maxwell's means, would be released on bail conditions. Accordingly, if the Court deems it necessary, it may impose private security guards as a condition of release.

CONCLUSION

For the foregoing reasons, Ms. Maxwell respectfully requests that the Court order her release on bail pursuant to the conditions she has proposed.

Dated: July 10, 2020

Respectfully submitted,

/s/ Mark S. Cohen

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Exhibit C

Doc. 22
The Government's Reply Memorandum in Support of Detention

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v.-	:	20 Cr. 330 (AJN)
GHISLAINE MAXWELL,	:	
Defendant.	:	

THE GOVERNMENT'S REPLY MEMORANDUM IN SUPPORT OF DETENTION

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Acting United States Attorney
Southern District of New York
Attorney for the United States of America

Alison Moe
Alex Rossmiller
Maurene Comey
Assistant United States Attorneys
- Of Counsel -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-v.- : 20 Cr. 330 (AJN)

GHISLAINE MAXWELL, :

Defendant. :

----------x

THE GOVERNMENT'S REPLY MEMORANDUM IN FURTHER SUPPORT OF DETENTION

The Government respectfully submits this reply memorandum in further support of its motion for detention, dated July 2, 2020 (the "Detention Memorandum") (Dkt. 4), and in response to the defendant's memorandum in opposition (the "Opposition Memorandum") (Dkt. 18).

The charges against Ghislaine Maxwell arise from her essential role in sexual exploitation that caused deep and lasting harm to vulnerable victims. At the heart of this case are brave women who are victims of serious crimes that demand justice. The defendant's motion wholly fails to appreciate the driving force behind this case: the defendant's victims were sexually abused as minors as a direct result of Ghislaine Maxwell's actions, and they have carried the trauma from these events for their entire adult lives. They deserve to see her brought to justice at a trial.

There will be no trial for the victims if the defendant is afforded the opportunity to flee the jurisdiction, and there is every reason to think that is exactly what she will do if she is released. For the reasons detailed in the Detention Memorandum, and as further discussed below, the defendant poses a clear risk of flight, and no conditions of bail could reasonably assure her continued appearance in this case. Among other concerns: (1) she is a citizen of a country that does not extradite its own citizens; (2) she appears to have access to considerable wealth

domestically and abroad; (3) her finances are completely opaque, as her memorandum pointedly declines to provide the Court with information about her financial resources; and (4) she appears to be skilled at living in hiding. These are glaring red flags, even before the Court considers the gravity of the charges in this case and the serious penalties the defendant faces if convicted at trial.

Instead of attempting to address the risks of releasing a defendant with apparent access to extraordinary financial resources, who has the ability to live beyond the reach of extradition in France, and who has already demonstrated a willingness and ability to live in hiding, the defendant instead proposes a bail package that amounts to little more than an unsecured bond. Among other things, the proposed bail package contemplates the defendant pledging as the sole security a property that is beyond the territory and judicial reach of the United States, and which therefore is of no value as collateral. She proposes six unidentified co-signers, an unknown number of whom even reside in the United States, and *none* of whose assets are identified. The Court and the Government have no information whatsoever regarding whether these co-signers would be able to able to pay the proposed $5 million bond should the defendant flee – or if, of equal concern, the co-signers are themselves so wealthy that it would be no financial burden whatsoever to do so. The defendant does not identify what residence she proposes to live at in the Southern District of New York, nor does she identify any meaningful ties to the area. And most importantly, the defendant's memorandum provides the Court with no information whatsoever about her own finances or her access to the wealth of others, declining to provide the Court the very information that would inform any decision about whether a bond is even meaningful to the defendant – and which the Government submits would reveal the defendant's financial means to flee and live comfortably abroad for the rest of her life.

Finally, the Government recognizes that the COVID-19 pandemic is – and should be – a relevant factor for the Court and the parties in this case. However, the Bureau of Prisons ("BOP") is taking very significant steps to address that concern, and the defendant has offered no reason why she should be treated any differently from the many defendants who are currently detained at the Metropolitan Detention Center ("MDC") pending trial, including defendants who have medical conditions that place them at heightened risk. Inmates at the MDC are able to assist in their own defense, especially long before trial, through established policies and procedures applicable to every pretrial detainee. This defendant should not be granted the special treatment she requests.

The defendant faces a presumption of detention, she has significant assets and foreign ties, she has demonstrated her ability to evade detection, and the victims of the defendant's crimes seek her detention. Because there is no set of conditions short of incarceration that can reasonably assure the defendant's appearance, the Government urges the Court to detain her.

ARGUMENT

Each of the relevant factors to be considered as to flight risk – the nature and circumstances of the offense, the strength of the evidence, and the history and characteristics of the defendant – weigh strongly in favor of detention, and the defendant's proposed package would do absolutely nothing to mitigate those risks.

I. The Defendant's Victims Seek Detention

As the Court is aware, pursuant to the Crime Victims' Rights Act ("CVRA"), a crime victim has the right to be reasonably heard at certain public proceedings in the district court, including proceedings involving release. 18 U.S.C. § 3771(a)(4). Consistent with that requirement, the Government has been in contact with victims and their counsel in connection with its application for detention. Counsel for one victim has already conveyed to the Government that

their client opposes bail for the defendant, and has asked the Government to convey that view to the Court. The Government also expects that one or more victims will exercise their right to be heard at the July 14, 2020 hearing in this matter, and will urge the Court not to grant bail. More generally, as noted above, the Government is deeply concerned that if the defendant is bailed, the victims will be denied justice in this case. That outcome is unacceptable to both the victims and the Government.

II. The Government's Case Is Strong

The defendant's motion argues, in a conclusory fashion, that the Government's case must be weak because the conduct charged occurred in the 1990s. That argument, which ignores the many specific allegations in the Indictment, could not be more wrong. As the superseding indictment (the "Indictment") makes plain, multiple victims have provided detailed, credible evidence of the defendant's criminal conduct. And while that conduct did take place a number of years ago, it is unsurprising that the victims have been unable to forget the defendant's predatory conduct after all this time, as traumatic childhood experiences often leave indelible marks. The recollections of the victims bear striking resemblances that corroborate each other and provide compelling proof of the defendant's active participation in a disturbing scheme to groom and sexually abuse minor girls. In addition to compelling victim accounts, as the Government has explained, the victims' accounts are corroborated by documentary evidence and other witnesses.

In particular, the victims' accounts are supported by contemporaneous documents and records, such as flight records, diary entries, and business records. The powerful testimony of these victims, who had strikingly similar experiences with Maxwell, together with documentary

evidence and witness testimony, will conclusively establish that the defendant groomed the victims for sexual abuse by Jeffrey Epstein.[1]

The defendant's motion alludes to defenses in this case, all of which are legal or procedural in nature, and none of which pass muster, let alone counsel in favor of bail. To begin with, the notion that the defendant is protected from prosecution by the Non-Prosecution Agreement ("NPA") between Jeffrey Epstein and the U.S. Attorney's Office in the Southern District of Florida ("SDFL") is absurd. That agreement affords her no protection in this District, for at least three reasons. First, the defendant was not a party to that agreement nor named in it as a third-party beneficiary, and the defendant offers no basis to think she would have standing to claim any rights under the NPA. Tellingly, the defendant cites no authority for the proposition that an agreement she was not a party to and that does not even identify her by name could possibly be invoked to bar her prosecution. Second, and equally important, the NPA does not bind the Southern District of New York, which was not a party to the agreement. *See United States v. Annabi,* 771 F.2d 670, 672 (2d Cir. 1985) (per curiam) ("A plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction.")); *United States v. Prisco*, 391 F. App'x 920, 921 (2d Cir. 2010). This rule applies even when the text of the agreement refers to the signing party as the "Government." *Annabi*, 771 F.2d at 672.

Third, and perhaps most important, even assuming the NPA could be read to protect this defendant and bind this Office, which are both legally unsound propositions, the Indictment

[1] Additionally, and beyond the strong evidence set forth in the Indictment, in just the past week, and in response to the charges against the defendant being made public, the Federal Bureau of Investigation ("FBI") and the U.S. Attorney's Office have been in touch with additional individuals who have expressed a willingness to provide information regarding the defendant. The Government is in the process of receiving and reviewing this additional evidence, which has the potential to make the Government's case even stronger.

charges conduct not covered by the NPA, which was limited by its terms to conduct spanning from 2001 to 2007, a time period that post-dates the conduct charged in the Indictment, and to violations of statutes not charged in this Indictment. In this respect, the Government further notes that the Indictment brought in this District is entirely independent of the prior SDFL investigation, and two of the victims referenced in the Indictment were never approached or interviewed by the SDFL, and had never spoken to law enforcement until they met with our Office in 2019.

Nor is there any force to the defendant's assertion – without explanation, much less legal authority – that the charges in the Indictment are untimely. As the Government explained in its opening brief, the charges in this case are timely, pursuant to 18 U.S.C. § 3283, which permits the prosecution of crimes involving the sexual abuse of minors at any time during the life of the victim. The defendant's claim that the Indictment is barred by the statute of limitations has no basis in law. For similar reasons, the Court should not give any weight to the defendant's bare assertions that the indictment is somehow "legally flawed" in unspecified ways or that the perjury counts are "subject to dismissal" for unspecified reasons. Opposition Memorandum at 19. These conclusory claims are baseless.

III. The Defendant Poses An Extreme Risk of Flight

As the Government detailed in its opening brief, the defendant's international ties, considerable financial resources, and transient lifestyle all make her a risk of flight. That risk is further exacerbated by the fact that the defendant is a citizen of France, which does not extradite its citizens to the United States pursuant to French law. In addition, and as detailed further below, the defendant has not only the motive to flee, but the means to do so swiftly and effectively. The defendant appears to have access to extensive sources of wealth. She does not have a job that would tie her to the United States, much less the Southern District of New York, and she does not

appear to depend on any job – or to have depended on any employment in the past 30 years – for the privileged lifestyle she has maintained for the entirety of that period. The defendant clearly has the means to flee.

More troubling still, the defendant's conduct at the time of her arrest further underscores the risk of flight she poses. When FBI agents arrived at the defendant's remote property in New Hampshire on the morning of July 2, 2020, they discovered the property was barred by a locked gate. After breaching the gate, the agents observed an individual who was later determined to be a private security guard. As the agents approached the front door to the main house, they announced themselves as FBI agents and directed the defendant to open the door. Through a window, the agents saw the defendant ignore the direction to open the door and, instead, try to flee to another room in the house, quickly shutting a door behind her. Agents were ultimately forced to breach the door in order to enter the house to arrest the defendant, who was found in an interior room in the house. Moreover, as the agents conducted a security sweep of the house, they also noticed a cell phone wrapped in tin foil on top of a desk, a seemingly misguided effort to evade detection, not by the press or public, which of course would have no ability to trace her phone or intercept her communications, but by law enforcement.

Following the defendant's arrest, the FBI spoke with the security guard, who informed the agents that the defendant's brother had hired a security company staffed with former members of the British military to guard the defendant at the New Hampshire property, in rotations. The defendant provided one of the guards with a credit card in the same name as the LLC that had purchased the New Hampshire property in cash. The guard informed the FBI that the defendant had not left the property during his time working there, and that instead, the guard was sent to

make purchases for the property using the credit card. As these facts make plain, there should be no question that the defendant is skilled at living in hiding.

The defendant asks the Court to ignore many of the obvious indicators of a flight risk by arguing that she has lived in hiding because of unwanted press attention. This argument entirely misses the point. First, the defendant's conduct is clearly relevant to the Court's assessment of her risk of flight, because it evidences her readiness and ability to live in hiding, and to do so indefinitely. As such, even if her behavior in the last year could be attributed solely to her desire to avoid media attention, that should give the Court serious concerns about what steps she would be willing to take to avoid federal prison. Second, the fact that the defendant took these measures to conceal herself after Epstein was indicted in this District – and after the Government announced that its investigation into Epstein's co-conspirators was ongoing – cannot be ignored. To the contrary, these measures are at least equally consistent with the notion that the defendant also sought to evade detection by law enforcement.

In attempting to sidestep the evidence of her ability and willingness to hide, the defendant points to her decision to remain in the United States for the past year while the Government's investigation remained ongoing. She claims that because she did not flee the country during an ongoing investigation, she will not do so while under indictment. This argument ignores the world of difference between believing that an investigation is ongoing and being indicted in six counts by a federal grand jury. The defendant now faces the reality of serious charges, supported by significant evidence, and the real prospect of spending many years in prison. The return of the indictment fundamentally alters the defendant's incentives and heightens the incentive to flee far beyond the theoretical possibility of a charge during an investigation (one the defendant may have wrongly believed would or could not reach her). That is especially so when the defendant has

spent the last two decades without facing consequences for her criminal actions. For years before her arrest in this case, the defendant likely believed she had gotten away with her crimes. That illusion has now been shattered, and she has a host of new reasons to use her considerable resources to flee.

Moreover, the defendant's willingness to brazenly lie under oath about her conduct, including some of the conduct charged in the Indictment, strongly suggests her true motive has been and remains to avoid being held accountable for her crimes, rather than to avoid the media. As alleged in the Indictment, in 2016, when the defendant was given the opportunity to address her conduct with minors in the context of a civil suit, she lied repeatedly. Those lies are, of course, the subject of two counts of perjury, and they evidence her willingness to flout the law in order to protect herself. The defendant's lies under oath should give the Court serious pause about trusting this defendant to comply with conditions of bail.

IV. The Defendant's Bail Proposal Offers No Security For Her Appearance

In its opening memorandum, the Government highlighted the defendant's extensive means to flee and her opaque finances. In her response, the defendant's brief provides zero information about her assets in the United States or abroad. The Court should be troubled by this. First, so far as the Government is aware, the defendant has not filled out a financial affidavit, under penalty of perjury, in connection with her application for bail, meaning that the Court has no reliable insight into the magnitude or scope of the defendant's resources.[2] However, what the Court does have are strong indicia that the defendant has access to enormous resources, including the large property she was found on, the private security guard being retained to live with her on that

[2] The Government understands from Pretrial Services that the defendant has indicated that she has less than a million dollars in bank accounts. The report has not yet been released. As discussed below, the Court should have serious pause before accepting this unverified information.

property, and the multi-million dollar property in the United Kingdom being offered as collateral. Indeed, it is revealing that the defendant's memorandum declines to discuss her assets or the assets to which she plainly has access. Without knowing the full scope of the defendant's financial resources, it would be impossible for the Court to even begin to evaluate whether conditions of bail would mitigate her risk of flight. More importantly, the defendant cannot claim that she has met her significant burden to rebut the presumption of detention in this case when she has failed to provide comprehensive, verified financial information under penalty of perjury.

Although the Government submits that no conditions of bail could reasonably assure the defendant's continued appearance, the defendant's proposed bail package offers almost no security whatsoever. The defendant appears to have significant assets, she has extensive foreign ties and is a citizen of a country that does not extradite its citizens to the United States, and she is charged with serious crimes involving the sexual exploitation of minors – and yet, she asks the Court to grant her bail secured only by a foreign property, which provides effectively no security at all.

Indeed, it is curious that a defendant who appears to have access to millions of dollars has not offered to post a single dime as collateral for the bond she proposes. Instead, as noted, she offers as security a foreign property, which is effectively meaningless. As a practical matter, the Government has no direct way to proceed against foreign property or sureties through bail forfeiture, because the Government cannot seize a foreign citizen's assets abroad or sell property in another nation based on a United States bail forfeiture judgment. The Government would be required to attempt to litigate a property dispute in another country, with a lengthy process and an uncertain outcome.

Additionally, the defendant proffers no information about her proposed co-signers other than that they are friends and relatives – in particular, she provides no information about the assets

of those individuals, including where they are based or whether the Government would be able to collect from them. Nor does she provide information sufficient to know whether her proposed co-signers are so wealthy that they would be willing to purchase the defendant's freedom for $5 million, an entirely too modest sum for a person of the defendant's means. In any event, as further described below, the defendant appears to have the financial resources to make her co-signers whole if she were to flee.

The defendant's failure to pledge any liquid assets, or to provide detailed financial information about herself or her proposed co-signers, is particularly jarring because she appears to have access to millions of dollars, principally in foreign accounts. In recent years, the defendant has been associated with multiple accounts with a Swiss bank (the "Swiss Bank") and multiple accounts with at least one bank headquartered in England (the "English Bank"). In 2018 and 2019, Form 114 ("FBAR") submissions on behalf of the defendant filed with the United States Treasury Department list accounts at the English Bank with maximum values totaling well over $2 million. In connection with the Swiss Bank, the defendant appears to be the grantor of a trust account (the "Trust Account") with a balance in June 2020 of more than $4 million. Among other transactions, the defendant appears to have transferred approximately $500,000 in March 2019 from one Swiss Bank account in her name to the Trust Account, and records further reflect a transfer between those same accounts in June 2019 of more than $750,000. The Trustees of the trust account, each of whom may act independently according to relevant Trust Account documents, appear to include both a relative and a close associate of the defendant. Additionally, the defendant was arrested last week at a property in New Hampshire that was purchased for more than $1 million in cash in December 2019. It is unknown whether the defendant purchased the property in cash, or whether she has a wealthy patron who did so on her behalf, but either scenario

should raise concerns about the defendant's access to financial resources that would enable her to flee.

Moreover, and as set forth in the Detention Memorandum, the defendant has been associated with more than a dozen bank accounts from 2016 to the present, and during that period, the maximum total balances of those accounts have exceeded $20 million. Those accounts engaged in transfers in amounts of hundreds of thousands of dollars at a time, including as recently as 2019. To the extent the defendant now refuses to account for her ownership of or access to vast wealth, it is not because it does not exist – it is because she is attempting to hide it.

The defendant's proposal of ankle-bracelet monitoring should also be of no comfort to the Court. In particular, a GPS monitoring bracelet is of no persuasion because it is does nothing to prevent the defendant's flight *after it has been removed.* At best, home confinement and electronic monitoring would reduce her head start should she decide to cut the bracelet and flee. *See United States v. Banki*, 10 Cr. 008 (JFK), Dkt. 7 (S.D.N.Y. Jan. 21, 2010) (denying bail to a naturalized citizen who was native to Iran, who was single and childless and who faced a statutory maximum of 20 years' imprisonment, and noting that electronic monitoring is "hardly foolproof."), *aff'd*, 369 F. App'x 152 (2d Cir. 2010); *United States v. Zarger*, No. 00 Cr. 773, 2000 WL 1134364, at *1 (E.D.N.Y. Aug. 4, 2000) (rejecting defendant's application for bail in part because home detention with electronic monitoring "at best . . . limits a fleeing defendant's head start"); *United States v. Benatar*, No. 02 Cr. 099, 2002 WL 31410262, at *3 (E.D.N.Y. Oct. 10, 2002) (same).

The defendant has no children in the United States, she does not reside with any immediate family members, and while the Government does not dispute that she is close with several of her siblings, as her time in hiding makes clear, she is clearly capable of maintaining those relationships remotely, which of course she could continue to do from abroad. Moreover, she has citizenship in

a country that does not extradite its citizens, has access to untold financial resources, and has every motivation to escape accountability for her appalling crimes. *See United States v. Boustani*, 356 F. Supp. 3d 246, 255 (E.D.N.Y. 2019) ("[T]he combination of Defendant's alleged deceptive actions, access to substantial financial resources, frequent international travel, complete lack of ties to the United States, and extensive ties to foreign countries without extradition demonstrates Defendant poses a serious risk of flight.") (citing *United States v. Zarrab*, No. 15 Cr. 867 (RMB), 2016 WL 3681423, at *8 (S.D.N.Y. June 16, 2016)). The defendant's proposed bail package is essentially nothing more than an unenforceable promise to return to Court. Given the gravity of the charged crimes, the defendant's substantial resources, her willingness to evade detection, and her lies under oath, the Court should take the proposed bail package for what it is worth: nothing.

V. The COVID-19 Pandemic Does Not Warrant The Defendant's Release

Finally, the current pandemic is not a reason to release this defendant. Indeed, courts in this district have regularly rejected applications for release based on assertions about the generalized risks of COVID-19. *See, e.g., United States v. Paulino*, No. 19 Cr. 54 (PGG), 2020 WL 1847914, at *6 (S.D.N.Y. Apr. 13, 2020) (Gardephe, J.) (denying bail application by defendant with hypertension, stating that "[a]s serious as it is, the outbreak of COVID-19 simply does not override the statutory detention provisions [of the Bail Reform Act]" (internal quotation omitted)); *United States v. Ortiz*, 19 Cr. 198 (KPF), 2020 WL 2539124, at *2 (S.D.N.Y. May 19, 2020) (quoting *United States v. Nunez*, No. 20 Cr. 239 (ER) (S.D.N.Y. Apr. 10, 2020) (Ramos, J.) ("[B]ecause there is a pandemic does not mean that the jailhouse doors ought to be thrown open")). Significantly, the defendant has not claimed that she is at a higher risk from COVID-19

than any other inmate at the MDC, and thus she cannot claim any greater need for bail than the many inmates awaiting trial there.[3]

The virus, of course, presents new and complex challenges for protecting inmates' health, but the BOP generally, and the MDC specifically, are prepared to handle the risks presented by COVID-19 and other health issues. The MDC's response to the pandemic was the subject of extensive evidentiary hearings in the context of a civil lawsuit in the Eastern District of New York. *See Chunn v. Edge*, No. 20 Cr. 1590, 2020 WL 3055669 (E.D.N.Y. June 9, 2020). In *Chunn*, the District Court conducted extensive fact gathering about the conditions at the MDC before concluding that "MDC officials have recognized COVID-19 as a serious threat and responded aggressively." *Id.* at *1; *see also id.* at 25 ("The MDC's response to COVID-19 has been aggressive and has included, among other steps, massively restricting movement within the facility, enhancing sanitation protocols, and creating quarantine and isolation units. And the data—though limited—suggests that these measures have been quite effective in containing COVID-19 thus far.").

Numerous judges in this District have rejected applications for release based on assertions about the hypothetical risks of COVID-19, including multiple cases involving defendants who, unlike this defendant, suffer from underlying health conditions. *See, e.g.*, *United States v. Hanes-Calugaru*, No. 19 Cr. 651, ECF No. 257 (S.D.N.Y. May 4, 2020) (Swain, J.) (denying pre-trial bail application by defendant who was on MDC's initial high-risk list but subsequently removed following new CDC guidance (*see* ECF Nos. 239, 242, 257)); *United States v. Curry*, 19 Cr. 742, ECF No. 37 (S.D.N.Y. Apr. 30, 2020) (Hellerstein, J.) (denying pre-trial bail application by

[3] The defendant also argues that the circumstances of the pandemic would pose a "significant hurdle" to the defendant's ability to flee. Opposition Memorandum at 16. The Government submits that the defendant has the means and resources to find her way out of the country, and a short quarantine period abroad would be a small price to pay to avoid years in prison.

defendant with asthma); *United States v. Medina*, 19 Cr. 351, ECF No. 68 (S.D.N.Y. Apr. 14, 2020) (Marrero, J.) (denying pre-trial bail application by defendant with diabetes and hypertension); *United States v. Bradley*, No. 19 Cr. 632, ECF No. 34 (S.D.N.Y. Apr. 14, 2020) (Daniels, J.) (denying pre-trial bail application by defendant with high blood pressure and obesity (*see* ECF Nos. 29, 33, 34)); *United States v. Vizcaino*, No. 20 Cr. 241, 2020 WL 1862631, at *3 (S.D.N.Y. Apr. 14, 2020) (Parker, J.) (denying pre-trial bail application and collecting cases in which bail applications have been denied even where defendants have underlying health conditions); *United States v. Irizzary*, 17 Cr. 283, 2020 WL 1705424 (S.D.N.Y. Apr. 8, 2020) (Preska, J.) (denying pre-trial bail application by defendant with asthma and anxiety); *United States v. Daniels*, 20 Cr. 69, ECF No. 26 (S.D.N.Y. Apr. 3, 2020) (Woods, J.) (denying pre-trial bail application (*see* ECF Nos. 19, 26)); *United States v. Parker*, 14 Cr. 139, ECF No. 51 (S.D.N.Y. Apr. 2, 2020) (Preska, J.) (denying pre-VOSR hearing bail application by inmate on MDC high-risk list with asthma (*see* ECF Nos. 48, 51)); *United States v. Conley*, No. 19 Cr. 131, ECF No. 366 (S.D.N.Y. Mar. 31, 2020) (Engelmayer, J.) (denying pre-trial bail application by defendant on high-risk list with asthma, partial lung removal, diabetes, high blood pressure, and hypertension (*see* ECF Nos. 363, 366)); *United States v. Chambers*, No. 20 Cr. 135, 2020 WL 1530746 (S.D.N.Y. Mar. 31, 2020) (Furman, J.) (denying pre-trial bail application by defendant with asthma); *United States v. Acosta*, No. 19 Cr. 848, ECF No. 14 (S.D.N.Y. Mar. 25, 2020) (Buchwald, J.) (denying bail application by defendant that relied on general reasons to release inmates because of the spread of the COVID-19 virus). As the foregoing citations make clear, the defendants in many of these cases asserted underlying health conditions that purportedly placed them at heightened risk with respect to COVID-19, but courts nevertheless denied their

applications in view of the applicable factors under the Bail Reform Act. This Court should reach the same conclusion based on the extraordinary risk of flight described in detail above.

The defendant's argument that bail is required for her to prepare her defense is equally unpersuasive. Judges in this district have repeatedly held that the current restrictions on inmate access to counsel do not warrant releasing defendants who should otherwise be detained under the Bail Reform Act. *See United States v. Tolentino*, 20 Cr. 007 (DLC), 2020 WL 1862670, at *2 (S.D.N.Y. Apr. 14, 2020); *United States v. Adamu*, 18 Cr. 601 (PGG), 2020 WL 1821717, at *6 (Apr. 10, 2020); *United States v. Brito*, 20 Cr. 63 (PGG), 2020 WL 2521458, at *5-6 (S.D.N.Y. May 17, 2020); *United States v. Ellison*, 18 Cr. 834 (PAE), 2020 WL 1989301, at *1-2 (S.D.N.Y. Apr. 27), *United States v. Melamed*, No. 19 Cr. 443 (LAK), 2020 WL 1644205, at *2 (S.D.N.Y. Apr. 2, 2020); *United States v. Pena*, No. 18 Cr. 640 (RA), 2020 WL 1674007, at *1 (S.D.N.Y. Apr. 6, 2020). Just last week, a district judge in the Eastern District of New York denied bail to a defendant who argued that restricted access to his counsel at the MDC required his release, while noting the volume of decisions reaching the same conclusion. *United States v. Shipp*, No. 19 Cr. 299 (NGG), 2020 WL 3642856, *3-4 (E.D.N.Y. July 6, 2020) (collecting cases).

This Court's decision in *Stephens* does not compel a different result here. In that case, this Court concluded that bail was necessary in order to permit the defendant to prepare for a significant hearing, which was scheduled for *six days later*. *United States v. Stephens*, No. 15 Cr. 95 (AJN), 2020 WL 1295155, at *3 (S.D.N.Y. Mar. 19, 2020) (finding that the limitations on the defendant's access to counsel "impacts the Defendant's ability to prepare his defenses to the alleged violation of supervised release in advance of the merits hearing scheduled for March 25, 2020."). By contrast, no evidentiary hearings have been requested, much less scheduled, in this case, and a trial date has not yet been set. *See United States v. Gonzalez*, No. 19 Cr. 906 (JMF), 2020 WL 1911209,

at *1 (S.D.N.Y. Apr. 20, 2020) ("Gonzalez fails to demonstrate that temporary release is 'necessary' for the preparation of his defense because, among other things, his trial is not scheduled for another five months."); *United States v. Eley*, No. 20 Cr. 78 (AT), 2020 WL 1689773, at *1 (S.D.N.Y. Apr. 7, 2020) ("Defendant's request for release is not compelled under the Sixth Amendment; with trial scheduled for nine months from now, this case is distinguishable from other instances in which an imminent evidentiary hearing may support a defendant's temporary release.").

In fact, the defendant's own motion makes clear that the MDC has been responsive to defense counsel's concerns and has ensured that they have access to their client. As their motion notes, the MDC provided defense counsel with access to their client within three hours of a request earlier this week, despite having zero notice and receiving the request after close of business in the evening. *See* Opposition Memorandum at 12. For non-emergencies, defense counsel can avail themselves of the scheduling system that has been instituted at the MDC to request regular calls with their client and will be able to coordinate with MDC legal counsel should an urgent need arise.

CONCLUSION

As set forth above, the defendant is an extreme risk of flight. The Government respectfully submits that the defendant cannot meet her burden of overcoming the statutory presumption in favor of detention. There are no conditions of bail that would assure the defendant's presence in court proceedings in this case. Accordingly, any application for bail should be denied.

Dated: New York, New York
July 13, 2020

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

By: Alison G. Moe

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Exhibit D

Transcript from Bail Hearing July 14, 2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v.

GHISLAINE MAXWELL,

Defendant.

----------x

New York, N.Y.

20 Cr. 330 (AJN)

Teleconference

Arraignment
Bail Hearing

July 14, 2020
3:05 p.m.

Before:

HON. ALISON J. NATHAN,

District Judge

APPEARANCES

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LAURA A. MENNINGER

THE COURT: Good afternoon, everyone. This is Judge Nathan presiding.

This is United States v. Ghislaine Maxwell, 20 Cr. 330.

I will take appearances from counsel, beginning with counsel for the defendant.

MS. MOE: Good afternoon, your Honor. Mark Cohen, Cohen & Gresser, for Ms. Maxwell. Also appearing with me today is my partner Chris Everdell of Cohen & Gresser and Jeff Pagliuca and Laura Menninger of the Haddon Morgan firm. Good afternoon, your Honor.

THE COURT: Good afternoon, Mr. Cohen.

And for the government.

MS. MOE: Good afternoon, your Honor. Alison Moe for the government. I'm joined by my colleagues Maurene Comey and Alex Rossmiller. And also, with the court's permission, we learned that the executive staff for the U.S. Attorney's office were unfortunately not able to Connecticut at the overflow dial-in so, with the court's permission, we would like to dial them in from a phone here if that's acceptable to the court.

THE COURT: The last word, the overflow dial-in was not full. Just a moment and we will make sure that they can connect in.

And let me say good afternoon, Ms. Maxwell, as well.

THE DEFENDANT: Good afternoon, Judge.

THE COURT: Ms. Maxwell, are you able to hear me and see me okay?

THE DEFENDANT: Yes, thank you.

THE COURT: And are you able to hear Mr. Cohen and counsel for the United States as well?

THE DEFENDANT: Yes. Thank you.

THE COURT: All right. If at any point you have difficulty with any of the technology, you can let someone there know right away, let me know, and we will pause the proceedings before going any further. Okay?

THE DEFENDANT: Thank you, Judge.

THE COURT: All right.

Just a minute while we check on the call-in line.

MS. MOE: Thank you, your Honor.

(Pause)

MS. MOE: Your Honor, apologies. We have also heard from colleagues in the office that the line is full. We have, however, been able to dial in the executive staff to a phone number here and my understanding is that they can hear and participate that way, if that's acceptable to the court. But of course we defer to the court's preference.

THE COURT: We are concerned about feedback from being on a speakerphone in that room. The phone number for nonspeaking co-counsel that was provided, that line is not full, and I would assume the executive leadership of the office

falls within that category, so they may call in to that number.

MS. MOE: Yes, your Honor. Thank you. We will do that.

THE COURT: All right.

MS. MOE: Thank you, your Honor.

THE COURT: All right. Thank you. Then we will go ahead and proceed.

I have called the case. I have taken appearances. Counsel, let me please have oral confirmation that the court reporter is on the line.

THE COURT REPORTER: Good afternoon, your Honor. Kristen Carannante.

THE COURT: Good afternoon, and thank you so much.

We also have on the audio line Pretrial Services Officer Leah Harmon and --

THE PRETRIAL SERVICES OFFICER: Hello, your Honor. Good afternoon.

THE COURT: Good afternoon. Thank you.

We are here today for the arraignment, the initial scheduling conference, and bail hearing in this matter.

As everyone knows, we are in the middle of the COVID-19 pandemic. I am conducting this proceeding remotely, pursuant to the authority provided by Section 15002 of the CARES Act and the standing orders issued by our Chief Judge pursuant to that act.

I am proceeding by videoconference, which I am accessing remotely. Defense counsel and counsel for the government are appearing remotely via videoconference and the defendant, Ms. Maxwell, is accessing this videoconference from the MDC in Brooklyn.

Ms. Maxwell, I did confirm that you could hear me and see me; and, again, if at any point you have any difficulty with the technology, please let me know right away. Okay?

THE DEFENDANT: Thank you, your Honor. I will do that.

THE COURT: Thank you. And if at any point you would like to speak privately with Mr. Cohen, let me know that right away, and we will move you and your counsel into a private breakout room where nobody else will be able to see or hear your conversation, okay?

THE DEFENDANT: Again, thank you, your Honor. I appreciate that. Thank you.

THE COURT: Thank you.

Mr. Cohen, likewise, should you request to speak with Ms. Maxwell privately, don't hesitate to say that.

MR. COHEN: Thank you, your Honor.

THE COURT: We will turn now to the waiver of physical presence. I did receive a signed waiver of physical presence form dated July 10, 2020.

Mr. Cohen, could you please is describe the process by

which you discussed with Ms. Maxwell her right to be present and the indication of her knowing and voluntary waiver of that right provided on this form.

MR. COHEN: Yes, your Honor. We, given the press of time, we were not able to physically get the form to our client, but my partner Chris Everdell and I went through it with her, read it to her, and she gave us authorization to sign on her behalf and that's reflected on the form in the boxes where indicated, your Honor.

THE COURT: Okay. Ms. Maxwell, is that an accurate account of what occurred?

THE DEFENDANT: That is completely accurate, your Honor. Yes.

THE COURT: And you have had the form read to you or you have it physically now at this point?

THE DEFENDANT: That is correct, your Honor.

THE COURT: Okay. And you have had time to discuss it with your attorney?

THE DEFENDANT: I have, your Honor. Thank you.

THE COURT: Okay. And do you continue to wish to waive your right to be physically present and instead to proceed today by this videoconference proceeding?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. I do find a knowing and voluntary waiver of the right to be physically present for this

arraignment, scheduling conference, and bail hearing.

Counsel, as you know, to proceed remotely today, in addition to the finding I have just made, I must also find that today's proceeding cannot be further delayed without serious harms to the interests of justice.

Ms. Moe, does the government wish to be heard on that?

MS. MOE: Yes, your Honor.

The government submits that proceeding remotely in this fashion would protect the interests of the parties and the safety in view of the pandemic. We further submit that this proceeding can be conducted remotely with full participation of the parties in view of the preparation and steps everyone has taken to ensure proper participation.

THE COURT: All right. Thank you.

Mr. Cohen?

MR. COHEN: Your Honor, we have agreed to proceed remotely as your Honor just laid out.

THE COURT: Okay. I do find that today's proceeding cannot be further delayed without serious harms to the interests of justice for, among other reasons, that the defendant, who is currently detained, seeks release on bail.

The final preliminary matter I will address is public access to the proceeding, which has garnered significant public interest. As I have indicated in prior orders, the court has

arranged for a live video feed of this proceeding to be set up in the jury assembly room at the courthouse. This is the largest room available and, with appropriate social distancing, it can safely accommodate 60 people. The court has further provided a live video feed to the press room at the courthouse where additional members of the credentialed in-house press corps can watch and hear the proceeding.

Additionally, the court has provided a live audio feed for members of the public. My prior order indicated that the line can accommodate 500 callers, but with thanks of the court staff, that capacity has been increased to 1,000 callers.

Lastly, the court has provided through counsel a separate call-in line to ensure audio access to nonspeaking co-counsel, any alleged victims identified by the government, including those who wish to be heard on the question of pretrial detention, and any family members of the defendant. That line is operational now as well.

Counsel, beginning with Mr. Cohen, any objection to these arrangements regarding public access?

MR. COHEN: No, your Honor.

THE COURT: Ms. Moe?

MS. MOE: No, your Honor.

THE COURT: Then I will make the following findings:

First, COVID-19 constitutes a substantial, if not overriding, reason that supports the court's approach to access

in this case. As the chief judge of the district has recognized in order number 20MC176, COVID-19 remains a national emergency that restricts normal operations of the courts. Conducting this proceeding in person is not safely feasible.

Second, the measures taken by the court are no broader than necessary to address the challenges posed by the pandemic. Although the number of seats in the jury assembly room is limited to 60, it is necessary to do so for public and courthouse staff safety and is closely equivalent to the number of people who would be able to watch an in-court proceeding in a regular-sized courtroom. The number of people who will be able to hear the live audio of this proceeding far exceeds access under normal in-person circumstances.

Lastly, given the safety and technology limitations, there are no reasonable alternatives to the measures the court has taken.

Accordingly, the access provided is fully in accord with the First and Sixth Amendment public trial rights.

With those preliminary matters out of the way, counsel, I propose we turn to the arraignment.

Ms. Moe, am I correct that this is an arraignment on the S1 superseding indictment?

MS. MOE: That's correct, your Honor.

THE COURT: Can you explain what the difference is between the S1 and the original indictment?

MS. MOE: Yes, your Honor.

The difference is a small ministerial correction, a reference to a civil docket number contained in the perjury counts, which are Counts Five and Six of the superseding indictment. Aside from the alteration of those docket numbers, the reference to them, there are no other changes to the indictment.

THE COURT: All right. Again, I will conduct the arraignment on the S1 indictment.

Ms. Maxwell, have you seen a copy of the S1 indictment in this matter?

THE DEFENDANT: I saw the original indictment, your Honor. The original --

THE COURT: Okay.

All right. Mr. Cohen, did you have an opportunity to discuss with Ms. Maxwell the ministerial change that was completed by way of the superseding indictment?

MR. COHEN: Yes, yes, Judge. We have, your Honor.

THE COURT: Any objection to proceeding on the arraignment of the S1 indictment, Mr. Cohen?

MR. COHEN: No, your Honor.

THE COURT: All right.

Ms. Maxwell, have you had an opportunity to discuss the indictment in this case with your attorney?

THE DEFENDANT: I have, your Honor.

THE COURT: All right.

(Indiscernible crosstalk)

THE COURT: Go ahead.

THE DEFENDANT: No. I said I have been able to discuss it, your Honor, with my attorney.

THE COURT: Thank you.

You are entitled to have the indictment read to you here in this open court proceeding or you can waive the public reading. Do you waive the public reading?

THE DEFENDANT: I do, your Honor. I do waive --

THE COURT: How do you wish to --

THE DEFENDANT: -- your Honor.

THE COURT: Thank you. And how do you wish to plead to the charge?

THE DEFENDANT: Not guilty, your Honor.

THE COURT: All right. I will enter a plea of not guilty to the indictment in this matter.

Counsel, we will turn now to the scheduling conference.

I would like to begin with a status update from the government. Ms. Moe, you should include in your update a description of the status of discovery. Please describe the categories of evidence that will be produced in discovery. I will also ask you to indicate how you will ensure that the government will fully and timely meet all of its constitutional

and federal law disclosure obligations.

Go ahead, Ms. Moe.

MS. MOE: Thank you, your Honor.

With respect to the items that the government anticipates will be included in discovery in this case, we expect that those materials will include, among other items, search warrant returns, copies of search warrants, subpoena returns, including business records, photographs, electronically stored information from searches conducted on electronic devices. In addition, the materials with respect to the core of the case also include prior investigative files from another investigation in the Southern District of Florida among other items.

With respect to the status of discovery, the government has begun preparing an initial production and are prepared to produce a first batch of discovery as soon as a protective order is entered by the court.

With respect to the status of the proposed protective order, the government sent defense counsel a proposed protective order last week. We have touched base about the status of that with defense counsel, and they conveyed that they would like to continue reviewing and discussing it with the government, which we plan to do shortly after this conference, with an eye towards submitting a proposed protective order to the court as soon as possible. Following

the entry of that protective order, as I noted, your Honor, the government is prepared to make a substantial production of discovery.

Your Honor, in advance of the conference, the government and defense counsel proposed a joint schedule for discovery, motion practice, and a proposed trial date, in particular, the date selected in that schedule with an eye towards assuring that there was sufficient time for the government to do a careful and exhaustive and thorough review of all of the materials that I just referenced to make sure that the government is complying with its discovery obligations in this case, which we take very seriously. We expect that the bulk of the relevant materials will be produced in short order, primarily by the end of this summer, with additional materials to follow primarily in a category I mentioned before, your Honor, of electronically stored information, which is subject to an ongoing privilege review which we discussed and communicated with defense counsel about. We have proposed a scheduling order again to be very thorough in our review of discovery and in files in various places where they may be located and we are taking an expansive and thoughtful approach to our obligations in this case, your Honor.

THE COURT: Let me just follow up specifically, since you have referenced prior investigative files, to the extent we have seen in other matters issues with complete disclosure of

materials, it has been in some instances due to precisely that factor. So has there been a plan developed to ensure that down the road we are not hearing that there were delays or problems with discovery as a result of the fact that part of the disclosure obligation here includes materials from other investigative files?

MS. MOE: Yes, your Honor.

The files in particular that I am referring to are the files in the possession of the F.B.I. in Florida in connection with the previous investigation of Jeffrey Epstein. The physical files themselves were shipped to New York and are at the New York F.B.I. office. They have been imaged and scanned and photographed to make sure that a comprehensive review can be conducted, and they are physically in New York so that we can have access to those files. And again, as we have heard in ongoing information, we are particularly thoughtful about those concerns given the history of this case and the volume of materials and the potential sensitivities, your Honor.

THE COURT: Beyond the paper files which you have just indicated, the physical files, have you charted a path for determining whether there is any other additional information that must be disclosed?

MS. MOE: Your Honor, just to clarify, is your question with respect to the previous investigation or -- I apologize, your Honor. I wasn't sure what you meant.

THE COURT: Among other things, but, yes, I'm drilling down specifically on that since that has been, in somewhat comparable circumstances in other matters, the source of issues related to timely disclosures.

MS. MOE: Yes, your Honor. Our team met personally with the F.B.I. in Florida to make sure that we had the materials, and it was represented to us that the materials that the F.B.I. provided in Florida were the comprehensive set of materials. We will certainly have ongoing conversations to make sure that that is the case and if, in our review of files, we discover other materials, we will handle that with great care, and we are particularly sensitive to that concern.

THE COURT: And I expect here, and in all matters, not just accepting of initial representations made regarding full disclosure, but thoughtful and critical pushing and pressing of questions and issues with respect to actively retrieving any appropriate files. Are we on the same page, Ms. Moe?

MS. MOE: Yes, your Honor. Very much so.

THE COURT: All right. Thank you.

With that, why don't you go ahead and lay out the proposed schedule that you have discussed with Mr. Cohen, and then I will hear from Mr. Cohen if he has any concerns with that proposal.

MS. MOE: Yes, your Honor.

We would propose the completion of discovery, to

include electronic materials, to be due by Monday, November 9 of this year, and following that we would propose the following motion schedule: that defense motions be due by Monday, December 21 of this year; that the government's response be due on Friday, January 22, 2021; and that replies be due on Friday, February 5, 2021.

THE COURT: All right. Mr. Cohen, based on the government's description of both the quantity and quality of discovery, is that schedule that's been laid out sufficient from your perspective to do everything that you need to do?

MR. COHEN: Your Honor, just two points in that regard. I think counsel for the government did not mention in the e-mail we had sent to your Honor's law clerk that August 21 would be the deadline for production of search warrant applications and the subpoena returns. I think she just failed to mention it for the record. That would also be part of the schedule.

THE COURT: Thank you.

Ms. Moe, do you agree?

MS. MOE: That's correct, your Honor. I apologize. We did include that in the e-mail to your Honor's chambers, and that is correct.

And thank you, counsel, for clarifying that.

MR. COHEN: Two additional points, your Honor. The trial schedule that we are agreeing to, of course subject to

the court's approval, assumes there will be no substantive superseding indictment. If there is one, which the government has advised us they don't believe is imminent or I assume not at all, we might have to come back to the court to address not just trial schedule but other schedule as well.

And I am assuming -- we take your Honor's points about the issues on discovery, and we agree with them, particularly as to electronic discovery; and I am assuming that, as this unfolds, if we spot an issue we think needs further attention, we will be able to bring it to the court's attention.

Those are my points.

THE COURT: Thank you, Mr. Cohen.

Let me go ahead and ask, Ms. Moe, Mr. Cohen has made a representation but I will ask if you do anticipate at this time filing any further superseding indictments adding either defendants or additional charges?

MS. MOE: Your Honor, our investigation remains ongoing, but at this point we do not currently anticipate seeking a superseding indictment.

THE COURT: All right. So with that -- and also let me ask, Ms. Moe, just because it is next on my list, what processes the government has put in place to notify alleged victims of events and court dates pursuant to the Crime Victims Rights Act.

MS. MOE: Yes, your Honor. I am happy to give the

courts details about the process we used for notification for this conference and also what we anticipate to use going forward.

So to begin with, the government notified relevant victims or their counsel immediately following the arrest of the defendant on July 2 about the fact of the arrest and the initial presentment scheduled for later that day.

In advance of the initial presentment, those victims were provided the opportunity to participate through the court's protocol for appearances in New Hampshire.

On July 7, the court set a date for arraignment and bail hearing on July 14, today, and by the following day from the court's order, the government had notified relevant victims or their counsel of that scheduling order and advised victims and counsel of their right to be heard in connection with the bail hearing.

On that same day, the government posted to its victim services website, including a link to the indictment, as well as scheduling information relating to the hearing.

On July 9, the government updated the website to include the dial-in information that the court provided.

In addition, on July 8, the government sent letter notifications to individuals who have identified themselves as victims of Ghislaine Maxwell or Jeffrey Epstein that were not specifically referenced in the indictment.

Our process going forward, as we noted in that letter to victims, is that we will use an opt-in process so we will not notify individuals who do not wish to receive additional notifications but will continue to provide ongoing information about upcoming conferences and relevant details on the government's victim services website.

With respect to this specific hearing, the government has been advised by counsel to three victims of their interest in being heard in connection with today's bail proceeding. One victim's views are expressed in the government's reply memorandum; one victim has submitted a statement to the government and asked that the government read it during today's proceedings; and one victim has asked to be heard directly, and the government anticipates that she will make a statement at any time during this proceeding as necessitated by the court.

THE COURT: All right. Thank you.

Then, with that, returning to the schedule that you have laid out, and I thank counsel for conferring in advance, as to a proposed schedule, Mr. Cohen, let me just finalize if you agree to the proposed schedule that has been laid out by Ms. Moe and supplemented by you?

MR. COHEN: Yes, your Honor.

THE COURT: All right. Thank you.

And, Ms. Moe, you continue to support the proposed schedule?

MS. MOE: Yes, your Honor.

THE COURT: All right. Then I will set the schedule as jointly proposed by counsel. To reiterate, I am setting -- let me ask, Ms. Moe, if we are going to proceed to trial, how long of a trial does the government anticipate?

MS. MOE: Your Honor, the government anticipates that its case in chief would take no more than two weeks. But in terms of the length of time to block out a trial date, in an abundance of caution, in view of the need for jury selection and the defense case, we would propose blocking three weeks for trial.

THE COURT: All right. Thank you.

With that, I will adopt the schedule. I hereby set trial to commence on July 12, 2021, with the following pretrial schedule:

Initial nonelectronic disclosure generally, to include search warrant applications and subpoena returns, to be due by Friday, August 21, 20.

Completion of discovery, to include electronic materials, to be due by Monday November 9, 2020.

Any initial pretrial defense motions, based on the indictment or disclosure material and the like to be due by Monday, December 21, 2020.

If any motions are filed, the government's response due by Friday, January 22, 2021.

Any replies due by Friday, February 5, 2021.

If any motions seek an evidentiary hearing, I will reach out, chambers will reach out to schedule an evidentiary hearing.

And, as indicated, trial to commence on July 12, 2021.

In advance of trial, following motion practice, the court will put out a schedule regarding pretrial submissions, including *in limine* motions and the like.

With that, counsel, other matters to discuss regarding scheduling?

Mr. Cohen?

MR. COHEN: Not at this time, your Honor, not from the defense at this time.

THE COURT: Thank you.

Ms. Moe?

MS. MOE: Nothing further from the government regarding scheduling, your Honor. Thank you.

THE COURT: Okay. And, Ms. Moe, does the government seek to exclude time under the Speedy Trial Act?

MS. MOE: Yes, your Honor. In view of the schedule and the interests of producing discovery and permitting time for the defense to review discovery, contemplate any motions and pursue those motions, the government would seek to exclude time from today's date until our trial date as court set forth today.

THE COURT: Mr. Cohen, any objection?

MR. COHEN: No, your Honor.

THE COURT: Okay. I will exclude time from today's date until July 12, 2021, which I have said is a firm trial date. I do find that the ends of justice served by excluding this time outweigh the interests of the public and the defendant in a speedy trial. The time is necessary for the production of discovery and view of that by defense, time for the defense to consider and prepare any available motions and, in the absence of resolution of the case, time for the parties to prepare for trial.

To Ms. Moe and Mr. Cohen, although I have not set an interim status conference in the case, we do have our motion schedule, but for both sides, if at any point you wish to be before the court for any reason, simply put in a letter and we will get something on the calendar as soon as we conceivably can.

With that, Mr. Cohen, let me ask counsel if there is any reason that we should not turn now to the argument for bail?

MR. COHEN: No, your Honor.

THE COURT: Ms. Moe?

MS. MOE: No, your Honor. Thank you.

THE COURT: All right. I will hear on that question. It is the government's motion for detention, so I propose

hearing from the government first, and then any alleged victims who have indicated that they wish to be heard pursuant to 18 U.S.C. 3771(a)(4), and then I will hear from Mr. Cohen.

Any objection to proceeding thusly, Mr. Cohen?

MR. COHEN: No, your Honor.

THE COURT: Ms. Moe.

MS. MOE: Thank you, your Honor.

Your Honor, as we set forth in our moving papers, the government strongly believes that this defendant poses an extreme risk of flight. Pretrial Services has recommended detention, the victims seek detention, and the government respectfully submits that the defendant should be detained pending trial.

Your Honor, there are serious red flags here. The defendant has significant financial means. It appears that she has been less than candid with Pretrial Services. She has not come close to thoroughly disclosing her finances to the court. She has strong international ties and appears to have the ability to live beyond the reach of extradition. She has few, if any, community ties, much less a stable residence that she can propose to the court to be bailed to. And she has a strong incentive to flee to avoid being held accountable for her crimes.

Because the defendant is charged with serious offenses involving the sexual abuse of minors, your Honor, there is a

legal presumption that there are no conditions that could reasonably assure her return to court and, your Honor, the defendant has not come anywhere close to rebutting that presumption.

Turning first to the nature and seriousness of the offense and the strength of the evidence, the indictment in this case arises from the defendant's role in transporting minors for unlawful sexual activity and enticing minors to travel to engage in unlawful sexual active and participating in a conspiracy to do the same. The indictment further charges that the defendant perjured herself, that she lied under oath to conceal her crimes.

Your Honor, the charged conduct in this case is disturbing and the nature and circumstances of the offense are very serious. The defendant is charged with participating in a conspiracy to sexually exploit the vulnerable members of our community. In order to protect the privacy of the victims, I'm not going to go into details, your Honor, about the particular victims beyond what's contained in the indictment and our briefing; but, as the indictment alleges, the defendant enticed and groomed girls who were as young as 14 years old for sexual abuse by Jeffrey Epstein, a man who she knew was a predator with a preference for underaged girls. The indictment alleges that the defendant participated in some of these acts of abuse herself, including sexualized massages in which the victims

were sometimes partially or fully nude. She also encouraged these minors to engage in additional acts of abuse with Jeffrey Epstein. The indictment makes plain, your Honor, this was not a single incident or a single victim or anything isolated but, instead, it was an ongoing scheme to abuse multiple victims for a pattern of years. This is exceptionally serious conduct.

Given the strength of the government's evidence and the serious charges in the indictment, there is an incredibly strong incentive for the defendant to flee, an incentive for her to become at that fugitive to avoid being held accountable and to avoid a lengthy prison sentence.

The history and characteristics of the defendant underscores the risk of flight that she poses. The Pretrial Services report confirms that the defendant has been moving from place to place for some time, your Honor; and most recently it appears that she spent the last year making concerted efforts to conceal her whereabouts whilst moving around New England, most recently to New Hampshire, which I will discuss momentarily with respect to that particular --

THE COURT: Ms. Moe?

MS. MOE: -- property.

THE COURT: Ms. Moe, there is one assertion in the defense papers that I don't think I have seen the government's response to, and that is the contention that Ms. Maxwell, through counsel, kept in touch with the government since the

arrest of Mr. Epstein. Is that accurate and did that include information as to her whereabouts?

MS. MOE: Your Honor, that information did not include information about her whereabouts for starters; and, second, your Honor, the defendant's communications through counsel with the government began when the government served the defendant with a grand jury subpoena following the arrest of Jeffrey Epstein. So it is unsurprising that her counsel reached out to the government, which is in the ordinary course when an investigation becomes overt.

The government's communications with defense counsel have been minimal during the pendency of this investigation. Without getting into the substance, those contacts have not been substantial, your Honor. And to the court's question, they certainly have not included any information about defendant's whereabouts.

THE COURT: All right. Go ahead.

MS. MOE: Thank you, your Honor.

It appears that the defendant has insufficient ties to motivate her to remain in the United States. With respect to her family circumstances, she does not have children, she does not appear to reside with any immediate family members, and she doesn't have any employment that would require her to remain in the United States.

But, by contrast, she has extensive international

ties. While she is a naturalized citizen of the United States, she is a citizen of France and the United Kingdom. She grew up in the United Kingdom and has a history of extensive international travel. She owns a property in the United Kingdom. Your Honor, there is a real concern here that the defendant could live beyond the reach of extradition indefinitely.

The government has spoken with the Department of Justice attachés in the United Kingdom and France.

With respect to France, we have been informed that France will not extradite a French citizen to the United States as a matter of law, even if the defendant is a dual citizen of the United States.

As well, we have been informed that there is an extradition treaty between the United Kingdom and the United States. The extradition process would be lengthy, the outcome would be uncertain, and it's very likely that the defendant would not be detained during the pendency of such an extradition proceeding.

Those circumstances raise real concerns here. Particularly because the defendant appears to have the financial means to live beyond the reach of extradition indefinitely. As we detailed in our briefing, your Honor, the defendant appears to have access to significant and undetermined and undisclosed wealth.

In addition to the financial information described in the government's memoranda, we note, your Honor, that in the Pretrial Services report it appears that the defendant tried initially to brush off the subject of her finances when the Pretrial Services officer asked her, noting that she didn't have those details. The defendant ultimately provided limited, unverified, and questionable information that now appears in the Pretrial Services report. She listed bank accounts totaling less than a million dollars and a monthly income of nothing. Zero dollars per month of income.

In addition to the matter of her finances, the report raises other concerns about whether the defendant has been fully transparent with the court or whether she is being evasive.

THE COURT: Ms. Moe, you have emphasized the indication on the financial report of zero dollars of the income. Does the government think that there is income? Is there some uncertainty as to whether that is investment income as opposed to employment income or the like? What is the reason for the emphasis on that or to the extent it is an indication that the government finds that implausible?

MS. MOE: Yes, your Honor.

Separate from the matter of employment, it is very unclear whether the defendant is receiving proceeds from trust accounts or an inheritance or means of other kinds. It is

simply implausible that the defendant simply has a lump set of assets and no other stream of income, especially given the lifestyle that she has been living and as detailed in the Pretrial Services report. It just doesn't make sense. Either there are other assets or there is other income. We can't make sense of this lifestyle and this set of financial disclosures. This just doesn't make sense. And as I will detail in a moment, your Honor, it is inconsistent with the limited reference we have been able to obtain as we have been making an effort to trace the defendant's finances.

On that subject, your Honor, the report does raise concerns about whether the defendant has been fully transparent about her finances. As one example, the defendant told Pretrial Services that the New Hampshire property was owned by a corporation, that she does not know the name of the corporation, but that she was just permitted to stay in the house. It is difficult to believe that that was a forthcoming answer because it is implausible on its face and very confusing, but the government has continued to investigate the circumstances surrounding the purchase of that New Hampshire property.

This morning, your Honor, I spoke with an F.B.I. agent who recently interviewed a real estate agent involved in that transaction in New Hampshire. The real estate agent told the F.B.I. that the buyers to the house introduced themselves to

her as Scott and Janet Marshall, who both have British accents. Scott Marshall told her that the -- that he was retired from the British military and he was currently working on writing a book. Janet Marshall described herself as a journalist who wants privacy. they told the agent they wanted to purchase the property quickly through a wire and that they were setting up an LLC. Those conversations took place in November 2019. Your Honor, following the defendant's arrest, the real estate agent saw a photograph of the defendant in the media and realized that the person who had introduced herself as Janet Marshall, who had toured the house and participated in these conversations about the purchase, was the defendant, Ghislaine Maxwell.

That series of facts, which I just learned about this morning, your Honor, are concerning for two reasons. First, additionally, it appears that the defendant has attempted to conceal an asset from the court, and at the very least she has not been forthcoming in the course of her Pretrial Services interview; and, second, it appears that the defendant has used an alias and that she was willing to lie to hide herself and hide her identity and we discussed the additional indicia in our briefing your Honor. So that raises real concerns.

Moreover, the defendant's claims about her finances to Pretrial Services should be concerning to the court for additional reasons.

THE COURT: I'm sorry, Ms. Moe, if I may pause you before moving on from those points.

There is a basic dispute within the papers as to, I think, efforts similar to the ones you have described that are efforts to hide from authorities, which would certainly be an indication of risk of flight or whether, in light of the notoriety and public interest that the case has generated following the indictment of Mr. Epstein, whether it was an effort to protect privacy and hide from press for privacy reasons.

How does the government suggest that that factual determination be resolved, if you agree that it should, and what is your general response to the veracity of that assertion?

MS. MOE: Yes, your Honor.

As we discussed in our reply brief, your Honor, in our view, there is no question these circumstances are relevant to the court's determination with respect to bail for a number of reasons.

The first is, irrespective of the defendant's motive, these facts make clear to the court that the defendant has the ability to live in hiding, that she is good at it, that she is willing to do it even if it compromises her relationship and contacts with other people and, as the information provided by the real estate agent underscores, she is good at it and that

she passes. In other words, even though, as defense claims, that she is widely known, that there is press everywhere, she was able to pass during the purchase of a real estate transaction under a fake name and not be detected. So there really can be no question that the defendant is willing to lie about who she is, that she can live in hiding, that she has the means to do so. All of those things should be extremely concerning to the court, your Honor, as the court evaluates whether the defendant has the ability and willingness to live off the grid indefinitely. A year is an extremely long period of time to live in hiding, undetected by the public. And so all of those things are concerning.

With respect to the question of motive, your Honor, the government submits the court need not reach that ultimate issue, but we noted, your Honor, that there are indicia during the circumstances of the defendant's arrest that suggested that there was a motive to evade detection by law enforcement. But the bigger picture, your Honor, is the defendant's --

THE COURT: Ms. Moe --

MS. MOE: -- ability --

THE COURT: -- I was surprised that that information wasn't provided until the reply brief. Was there a reason for that?

MS. MOE: Yes, your Honor. The government wanted to be very careful to make sure we had full and accurate

information. So we were first notified about the circumstances the morning of the defendant's arrest, but I wanted to personally confer with the agent who was involved in breaching the door and verify that before including that information in a brief before the court. That's the reason for the delay, your Honor.

THE COURT: Okay. But the government has done that confirmation process and is confident of the information provided and the basic contention there is -- the basic contention there is that she resisted opening the door in the face of being informed that authorities were seeking entry and there is a suggestion of an effort to conceal location monitoring of some type by placing a cell phone in foil of some kind.

Could you explain what the government's understanding factually is and what you think I should derive from that?

MS. MOE: Yes, your Honor.

And, with apologies, we were very careful to make sure that the specific language in our briefing was accurate in consultation with the agents, so I don't want to add additional facts or speak extemporaneously about that; but, in short, that is correct that the defendant did not respond to law enforcement announcing their presence and directing her to open the door; that, instead, she left and went into a separate room.

And then, separately, the details about the cell phone, as the court noted, are contained in our brief and we submit that there could be no reason for wrapping a cell phone in tinfoil except for potentially to evade law enforcement, albeit foolishly and not well executed.

THE COURT: All right. Go ahead.

MS. MOE: Thank you, your Honor.

I believe I was discussing the defendant's finances, which underscore the concern about the defendant's ability to flee and about her questionable candor to the court. We submit there are concerns there for two reasons, your Honor.

The first is that we learned that records relating -- reflecting to client information for a SWIFT bank include self-reported financial information from the defendant. In other words, when the account was opened, there were disclosures made about the defendant's finances. In those records, which are dated January 2019, the defendant's annual income is listed as ranging from $200,000 to approximately half a million dollars. And both her net worth and liquid assets are listed as ranging from $10 million and above.

Second, as we noted in our reply, the defendant is the grantor of a trust account in the same SWIFT bank with assets of more than $4 million as of last month. Bank documents reflect that the trust has three trustees, one of whom has the authority to act independently. One of those trustees is a

relative of the defendant and the other appears to be a close associate.

Despite having put millions of dollars into this trust, your Honor, and despite its assets being controlled by a relative and close associate, the defendant mentions it not once in her motion before the court or in her Pretrial Services interview; and, in fact, despite the fact that the government said in its opening brief that the defendant's finances and her uncertain amount of wealth, including issues about whether her wealth was stored abroad, are serious concerns with respect to the defendant's risk of flight, the defendant's opposition does not discuss this at all. There is no mention of the defendant's finances and no effort to address those concerns whatsoever.

In sum, your Honor, the court has been given virtually no information about the defendant's possession of and apparent access to extensive wealth. The court should not take that concealment, your Honor, we respectfully submit, as an invitation to demand further details, but instead to recognize that if the court can't rely on this defendant to be transparent at this basic initial stage, the court cannot rely on her to return to court if released. In short, she has not earned the court's trust.

Finally, your Honor, turning to the defendant's proposed bail package, in light of all of the red flags here --

the defendant's demonstrated willingness and ability to live in hiding, her ability to live comfortably beyond the reach of extradition, her strong interactional ties and lack of community ties, significant and unexplained wealth, and the presumption of detention in light of very serious charges -- in light of all that, your Honor, it is extremely surprising that the defendant would propose a bail package with virtually no security whatsoever.

In addition to failing to describe in any way the absence of proposed cosigners of a bond, the defendant also makes no mention whatsoever about the financial circumstances or assets of her spouse whose her identity she declined to provide to Pretrial Services. There is no information about who will be cosigning this bond or their assets and no details whatsoever.

The government submits that no conditions of bail would be appropriate here. But it is revealing, your Honor, that the defendant had both declined to provide a rigorous, verified accounting of her finances and that she does not propose that she pledge any meaningful security for her release. She identifies no stable residence where she could reside. Instead, she proposes, among other proposals, that she stay at a luxury hotel in Manhattan, the most transient type of residence. And it is curious, your Honor, that the defendant offers to pay for a luxury hotel for an indefinite period and

yet does not offer to post a single penny in security for the bond she proposes.

Your Honor, the defendant is the very definition of a flight risk. She has three passports, large sums of money, extensive international connections, and absolutely no reason to stay in the United States to face a potential significant term of incarceration.

The government respectfully submits that the defendant can't meet her burden of overcoming the statutory presumption in favor of detention in this case. There are no conditions of bail that would assure the defendant's presence in court proceedings in this case, and we respectfully request that the court detain the defendant pending trial.

Thank you, your Honor.

THE COURT: Thank you, Ms. Moe.

Just to make explicit what is clear by the government's written presentation and oral presentation, you are not resting your argument for detention on dangerousness to the community at all. It is resting on risk of flight, correct?

MS. MOE: That's correct, your Honor.

THE COURT: All right. Thank you.

Ms. Moe, you have indicated that you have heard from victims who are entitled, under federal law, to be heard at this proceeding. Could you indicate -- I think you indicated

that you have a written statement and then that there is an alleged victim who wishes to be heard. Is that correct?

MS. MOE: That is correct, your Honor.

THE COURT: Why don't you begin with the written statement and then after that you can identify, as you like, the alleged victim who wishes to be heard, and my staff will unmute at that time that person so that they can be heard.

Go ahead.

MS. MOE: Thank you, your Honor.

As I mentioned before, your Honor, the government has received a written statement from a victim who prefers to be referred to as Jane Doe today in order to protect her privacy. The following are the words of Jane Doe which I will read from her written statement.

Jane Doe wrote:

"I knew Ghislaine Maxwell for over ten years. It was her calculating and sadistic manipulation that anesthetized me, in order to deliver me, with full knowledge of the heinous and dehumanizing abuse that awaited me, straight to the hands of Jeffrey Epstein. Without Ghislaine, Jeffrey could not have done what he did. She was in charge. She egged him on and encouraged him. She told me of others she recruited and she thought it was funny. She pretends to care only to garner sympathy, and enjoys drawing her victims in with perceived caring, only to entrap them and make them feel some sense of

obligation to her through emotional manipulation. She was a predator and a monster.

"The sociopathic manner in which she nurtured our relationship, abused my trust, and took advantage of my vulnerability makes it clear to me that she would have done anything to get what she wanted, to satisfy Mr. Epstein. I have great fear that Ghislaine Maxwell will flee, since she has demonstrated over many years her sole purpose is that of self-preservation. She blatantly disregards and disrespects the judicial system, as demonstrated by her perjuring herself and bullying anyone who dared accuse her.

"I have great fear that she may seek to silence those whose testimony is instrumental in her prosecution. In fact, when I was listed as a witness in a civil action involving Maxwell, I received a phone call in the middle of the night threatening my then two-year-old's life if I testified.

"I have fear speaking here today, even anonymously. However, I have chosen to implore the court not to grant bond for Ms. Maxwell because I know the truth. I know what she has done. I know how many lives that she has ruined. And because I know this, I know she has nothing to lose, has no remorse, and will never admit what she has done.

"Please do not let us down by allowing her the opportunity to further hurt her victims or evade the consequences that surely await her if justice is served. If

she believes she risks prison, she will never come back. If she is out, I need to be protected. I personally know her international connections that would allow her to go anywhere in the world and disappear at a moment's notice or make others disappear if she needs to."

Your Honor, those are the words of Jane Doe.

THE COURT: All right. Thank you.

Ms. Moe, would you indicate how the victim who wishes to be heard should be recognized?

MS. MOE: Yes, your Honor.

The government has been informed through the victim's counsel that the victim wishes to speak in her true name, which is Annie Farmer.

THE COURT: All right. I will ask my staff to please unmute Ms. Farmer.

MS. FARMER: Can you hear me, your Honor?

THE COURT: I can, Ms. Farmer. You may proceed.

MS. FARMER: Thank you. I appreciate the opportunity to speak.

I met Ghislaine Maxwell when I was 16 years old. She is a sexual predator who groomed and abused me and countless other children and young women. She has never shown any remorse for her heinous crimes, for the devastating, lasting effects her actions caused. Instead, she has lied under oath and tormented her survivors.

The danger Maxwell must be taken seriously. She has associates across the globe, some of great means.

She also has demonstrated contempt for our legal system by committing perjury, all of which indicate to me that she is a significant flight risk.

We may never know how many people were victimized by Ghislaine Maxwell, but those of us who survived implore this court to detain her until she is forced to stand trial and answer for her crimes.

Thank you, your Honor.

THE COURT: Thank you, Ms. Farmer. All right.

And, Ms. Moe, is the government aware of any other victims who are entitled to -- alleged victims who are entitled to and wish to be heard at this proceeding?

MS. MOE: No, your Honor. Thank you.

THE COURT: And, Ms. Moe, again, just to confirm, because there was allusion in the statements of the victims to fear and danger, the government is not seeking the court to make any findings regarding danger to the community in coming to its ultimate conclusion regarding pretrial detention, correct?

MS. MOE: That's correct, your Honor.

THE COURT: All right. Ms. Moe, anything further before I hear from Mr. Cohen?

MS. MOE: No, your Honor. Thank you very much.

THE COURT: Thank you, Ms. Moe.

Mr. Cohen, you may proceed.

MR. COHEN: Thank you, your Honor. Thank you very much for the opportunity to be heard and also for accommodating us with regard to the briefing schedule. We appreciate that, your Honor.

Your Honor, this is a very important proceeding for my client. It is critical and we submit, as we laid out in our papers, that under the Bail Reform Act and related case law, none of which, by the way, was discussed in the government's presentation, she is -- she ought to be released on a bail package with strict conditions, your Honor.

And, frankly, in order to defend a case like this during the COVID crisis, with the extent of discovery which was discussed earlier in the proceeding, that's going to take the government until November to produce to us, the notion of preparing a defense with our client while she is in custody under these conditions is just not realistic.

I would also like to take a moment, your Honor, to address a few things. As we noted in our papers, our client is not Jeffrey Epstein, and she has been the target of essentially endless media spin that apparently the government has picked up in its reply brief and in its presentation today, trying to portray her before the court as a ruthless, aimless, sinister person.

I do want to note, before I go further, to pick up on something the court said. We have a proceeding now where the government is dribbling out facts or what they claim are facts that they could have and should have put in their opening memorandum so we would have had an opportunity to address them in writing before the court. That's not how this is supposed to proceed, your Honor, and I thank your Honor for pointing that out. Each --

THE COURT: But, Mr. Cohen, please, by all means, you have had the reply in the time that I have as well. You shouldn't hesitate to respond to any of those facts now.

MR. COHEN: I appreciate that, your Honor, and I'm going to proceed by proffer. I would have preferred to be able to submit something in writing, but obviously the way it was done, we were deprived of that chance.

I also want to make clear that our client is not Epstein. She is not the monster that has been portrayed by the media and now the government. She is part of a very large and close family, with extensive familial relations, extensive friendships, extensive professional relationships. Many of these folks are on the call today, your Honor, and thank you, your Honor, for making that available, though not identified, which is something one would normally do in a traditional bail hearing, because of the very real concern that they have and our client has about her safety and about her privacy and her

confidentiality, as your Honor pointed out. And as you will see in a moment, that explains a lot of the spin the government is putting on facts in this case.

Your Honor, people have received physical threats. My client has received them. Most of those close to her have received them. They have received death threats. They have been injured in their jobs, in their work opportunities, in their reputations, simply for knowing my client. It's real. It's out there. The facts of all the steps the court had to go through just to make the public access available to this proceeding is also a reality.

There is a real thing out there having a very significant impact on our client. There are folks who would normally come forward as part of a bail package who your Honor is aware of from the Pretrial Services report who can't now, at least at this point, because of the safety and confidentiality concerns. Since last week our firm alone and my colleagues at Haddon Morgan have been besieged with e-mails and posts, some of them threatening. This is all very real. The government attempts to poo-poo it, to give it the back of the hand. It is very real, and we submit it is a factor for the court to consider in its discretion.

Before I go further, your Honor, I would like to go through the 3142(g) analysis. But before I do that, I would like to make one comment about the CVR -- CVRA proceeding under

377(1), and we understand that the court is following the statute. The statute gives alleged victims the right to speak through counsel, through the government, or directly, and be heard, and we understand that, your Honor.

The question today before the court, we submit, is whether or not our client could be released or should be released on a condition or combination of conditions to assure her appearance. And as to that question, the presentations today do not speak, they do not speak to risk of flight, and the courts have -- in this circuit have thought about and researched what weight should be given to that. There is an opinion by Judge Orenstein in the Eastern District, *United States v. Turner*, from April 2005, not cited by the government, in which the court, after carefully surveying the legislative history and background of the CVRA and its interplay with the bail reform statute, concluded, "In considering how to ensure that the rights are afforded, I am cognizant that the new law gives crime victims a voice but not a veto. Of particular relevance to this case, a court's obligation to protect the victim's rights and to carefully consider any objections that victim may have never requires it to deny a defendant release on conditions that will adequately secure the defendant's appearance," going on to cite the Senate legislative history that's being cited with approval of *United States v. Rubin*, also an Eastern District case.

So we understand why the court has to follow this process, but we submit that these presentations just are not relevant to the determination before the court today. And, again, we don't have spin. The big fact that the government, Ms. Moe tried to put before you through the victim is that supposedly someone had called in a civil action threatening the two-year-old child. Notice how carefully that was phrased, your Honor. It wasn't tied to Ms. Maxwell. It's more spin, spin, spin.

So we are here to consider bail. We should consider the statute. We should consider your Honor's guidance under the statute. So let me just put that to one side. I determine that that really disposes of the issue of what weight to give.

In turning to the statute, your Honor, turning to the factors, I don't want to spend a lot of time on the standard, because I know your Honor is very familiar with it, but I do want to point out that, in an opening brief and reply brief and now an oral presentation, the government has not once represented the standard to your Honor nor the burden that it has. And that is the statute, under 3142(c), says that "even the case where there is not to be release ROR" -- which this is not that case -- "the court shall order pretrial release subject to the least restrictive condition or combination of conditions." That as you now read, of course, in light of 3142(e), (f), and (g), the provisions on detention, that the

law of the statute, by its structure, favors release. The Supreme Court has and the Second Circuit has advised us that a very limited number of people should be detained prior to trial because of the statute's structure, and the government nowhere mentions that. It basically acts as if all it has to do is invoke the presumption on the client and then we are done, and that's just not the legal standing, your Honor.

They also say nothing about the burden, which is discussed on a case written for the Second Circuit by Judge Raggi, and also the *U.S. v. English* case. Without going into a lot of detail, as the court is aware, the burden of persuasion is the government's. It never shifts. The presumption can be rebutted, and we submit it is here, and then it is the burden of the government to show that the defendant is a risk of flight and that there are no conditions or combination of conditions to secure the release, which we submit they haven't done here.

So let me turn, your Honor, if I may, to the factors under 3142(g), and before I do that, I also want to address some of the government's comments about the bail package. We decided that we should come before your Honor with a package that was set out subject, of course, to the ruling provided by the court, subject of course to verification as to suretors by Pretrial Services and the court. We didn't want to just walk in and say, Judge, we should be entitled to bail, please set

conditions. So what we did is we went through all the high profile cases in this courthouse in the past several years and other cases, cases like *Madoff*, cases like *Dreier*, cases like *Esposito*, where Judge Marrero ruled in 2018 relating to an alleged member of organized crime, and we went through those cases to find the conditions that were listed under 3142(c), and in those cases that would we believe be relevant and applicable here, and we believe we have listed them all. We understand that of course they would be subject to verification; and as we noted in our papers and I noted today, if we could have a guarantee of safety, if we could have a guarantee of privacy and confidentiality, and if the court required it, we believe there are other suretors who we could provide and perhaps other amounts of property as well. That is an issue. It is a real issue in this case. It is something the government is just avoiding, but it is real.

So let me talk now, your Honor, if I might, about the 3142(g)(3) factors, which are the factors relating to the history of the defendant.

The government said --

THE COURT: Mr. Cohen, just before you move to that, the three cases that you cited -- *Esposito*, *Dreier*, *Madoff* -- factually did any of those cases involve defendants with substantial international and foreign connections?

MR. COHEN: No, I don't believe they did. The cases

that are relevant to that, which I was going to get to, your Honor, are *Khashoggi*, *U.S. v. Khashoggi*, *U.S. v. Bodmer*, *U.S. v. Hanson*, and *Sabhnani* itself, all of which involve defendants with substantial connections.

And I might follow up on your Honor's question, when you take off the spin and you take off the media -- and I'm going to get to it in a moment, because your Honor is going to allow me to respond -- here is their case: Defendant is a citizen of more than one country, England and France, not exactly exotic places. The defendant has three passports. The defendant has traveled internationally in the past, not in the past year. There is no refutation from the government on that, and they have been all over her travel records. The defendant has resided here in the past year. She has traveled internationally and, according to the government, she has financial means. I will get to that in a moment, Judge. But let's assume for the purposes of this discussion that she has financial means and not the lies that the government laid out. What do those cases teach? They teach that that is something the court can and should address in the bail conditions. They teach that they may require stricter bail conditions. They don't teach that that means there should be no bail at all. In *Sabhnani*, a Second Circuit case, the allegation was that the defendants have held two individuals in slavery for five years, and they had many more international ties or international

travel than alleged as to our client, certainly in the past year, and strict release was approved with strict bail conditions.

In *Bodmer*, which was before Judge Scheindlin in 2004, the defendant was a Swiss citizen, and Switzerland had taken the position it would not extradite its citizens for proceedings in the United States. And Judge Scheindlin observed, well, if that becomes the test for bail, then no citizen of Switzerland can ever get bail in the United States. So, too, here. If that's the test for France, then no French citizen, under the government's reasoning, could ever get bail in the United States.

And in *Bodmer* it was even the allegation -- the case was a fraud case -- the allegation was that the defendant who was a Swiss attorney had, according to the government, been opening up Swiss accounts overseas and that that was some form of hiding. Even with all that, the court said what many courts have said in this courthouse, to be addressed in the conditions. Doesn't mean the government has carried its burden of showing there is no combination of conditions.

In the *Khashoggi* case, written by Judge Keenan in 1989, this was a person of extraordinary wealth, way more than anything the government alleges that our client has, he was, according to the government, a fugitive, a Saudi citizen who had not been in the United States for three years prior to his

arrest. That defendant was released on bail conditions, strict bail conditions.

And I mention *Esposito*, which is the 2019 case from Judge Marrero, that is a case in which the allegation was that the defendant was a senior ranking member of organized crime and had access to financial means as well.

But all of those cases, as well as *Madoff* and *Dreier*, which I'm sure the court is familiar, with involved allegations of defendants with hundreds of millions of dollars, in all of those cases, the courts held that bail should be set subject to strict conditions. And by the way, Judge, in all of those cases, the defendants appeared for court. They all made appearances and appeared for trial.

There are also cases from the context involving pornography or sex crime allegations, such as the *Deutsch* case coming from the Eastern District several years ago, the *Conway* case in the Northern District of California. Again, understanding those are the allegations, the decision was made that release could be awarded on conditions.

You even had one recently in the Second Circuit that I'm sure everyone is familiar with *United States v. Mattis*, different setting, because that was a dangerousness case and the government is not proceeding on dangerousness grounds, but that is the case where the allegation is that two attorneys threw a Molotov cocktail into a police car; challenge to bail

appealed by the government; decision of the court, release on strict conditions. That is how the law works and comes out in this area, but that's something, your Honor, that the government did not address. And if the court determines that the conditions that we have proffered are insufficient or need further verification, as long as we can have some assurance of safety and confidentiality, we would recommend that the court keep the proceeding open, and we should be able to get whatever the court needs to satisfy it. So that's the legal analysis that was absent in the government's presentation today and its papers.

Let me now, because I have to, because this has been put out before your Honor in, of course, a public proceeding, let me respond to some of the allegations made for the first time in the reply brief, trying to spin facts to make my client look sinister to your Honor.

Here is fact one: She is a risk of flight because she has been hiding out. Well, let's think about this. She has been litigating civil cases in this courthouse and other parts of the country since 2015, denying, as she does here before your Honor, that she did anything improper with regards to Mr. Epstein. We submit, your Honor, that is the opposite of somebody who is looking to flee. And in fact, one of the people who spoke before your Honor is a plaintiff in one of those lawsuits seeking millions of dollars from our client and

seeking millions of dollars from a fund that's being set up. Something for the court to consider.

She has also, as we mentioned, remained in the United States, even though she has known of the investigation. How could she not? It's been unbelievably public for the past year. And we have been in regular contact with her -- with the government. Your Honor asked that question, very careful question from the court, and we got a shimmy from the government in response. We have been in contact with them, conservatively -- as we checked last night, because we thought you might ask -- conservatively eight to ten times in the past year, all for the same purpose, to urge them not to bring this case, which shouldn't have been brought.

The notion that experienced counsel, and counsel at Haddon Morgan is also experienced, is in regular contact with the government, would surrender their client, and they turn around and deny that to the court and deny that voluntary surrender would and could have and should have been possible here is, we submit, another factor for the court to consider.

So let me turn to the reply brief.

THE COURT: Sorry. If I may, Mr. Cohen, I just want to make sure I understand that last point. Are you saying that defense counsel indicated to the government that, should there be an indictment returned, you were seeking to arrange a voluntary surrender? Is that the contention?

MR. COHEN: To be precise, we were urging them not to return an indictment and saying we were always available to speak. And, frankly, your Honor, I have been doing this kind of work for 33 years, everyone knows what that means.

THE COURT: So you were implying --

(Indiscernible crosstalk)

THE COURT: You were implying that, though you were urging --

MR. COHEN: Yes.

THE COURT: -- or seeking to forestall the indictment, should there be an indictment, you were implying that you should be contacted for voluntary surrender.

MR. COHEN: Yes, of course. And the day after our client was arrested, we got a note from the government sending the application to detention addressed to us and Haddon Morgan saying your client, Ms. Maxwell, was arrested yesterday. So there was no doubt that we represented her along with Haddon Morgan. There was no doubt that we were available and could have been contacted and worked this out. There was no doubt that we are confident we would have.

Let me turn to the reply brief and the effort to throw some more dirt on my client that we again submit should not be considered as part of the governing legal standards here and the precise question before the court. You heard it today and in the brief we hear that at the time of her arrest, the agents

breached the gate and they saw her through the window try to flee to another room in the house, quickly shutting the door, and that she -- agents were ultimately forced to breach the door. So here is the spin. It's as if the government is just sort of giving it for the media, here is the spin given to your Honor to try to influence your Honor's discretion. What actually happened? At least the court has said we can respond by proffer. We weren't given a chance to respond in writing. My client was at the property in the morning in her pajamas. She was there with one security guard. Two people in the house. The front door was unlocked. All the other doors of the house were open. The windows were open. Dozens of agents came storming up the drive, creating a disturbance. My client had to hire security because of the threats to her that I have already relayed before, and the protocol was that in a disturbance to go into new room. That's all she did. Not running out of the house, not, you know, looking for some secret tunnel, went in the other room. The F.B.I. knocked down the door which, by the way, was open, and my client surrendered herself for arrest. That's far from the picture painted by the government.

Let me turn to another thing that the government mentioned today in an effort to sort of spin the facts, make everything look sinister with respect to my client. The government said in its opening brief, well, Judge, she is

hiding. She is a risk of flight because she changed her e-mail and phone number. That's what we heard in the opening brief. Well, what happened? Something the government, frankly, should know about, because it was certainly public, last year, in a civil litigation, in August of 2019, right around the time of the arrest of Mr. Epstein, the Second Circuit ruled that certain records in one of the civil cases should be unsealed and released to the public. That was done. There was no stay at the moment. The demand was issued, and the documents were released. Certain of those documents were supposed to be redacted and sometimes they were and sometimes they were not, documents including e-mail addresses, Social Security numbers, names, phone numbers, the sorts of things your Honor, I am sure, has to deal with all the time in these kinds of situations.

But as it turned out, for whatever reason, some of the documents were not redacted and her e-mail address was revealed. Shortly after that, she starts getting strange e-mails. Her phone is hacked, and she had to change e-mails and change the account.

Now she has got a phone that has legal materials on it, correspondence with her counsel in civil litigation that's been hacked, so she keeps it. Why does she keep it? Because she is in civil litigation. Her obligation is to keep evidence, not destroy it, and is advised that a way to keep it

from being hacked, again, is to put it in the equivalent of a Faraday bag, whether it be tinfoil or the bags they now make in briefcases, and that's it. That's all that she does. And I guarantee to your Honor, given the tenor of the government's presentation, that had she said, well, this phone was hacked, I'm just going to throw it away, the government would be standing before your Honor today say, ah-ha, she destroyed evidence, that adds to risk of flight. And she had she put it in a safe deposit box, rather than to destroy it, they would be saying we cracked into a safe deposit box, your Honor. This is evidence of a risk of flight. It just does not fit the test, we submit.

And the last point on this, your Honor, which, frankly, in some ways is the most telling point of all, the agents do a security sweep, considering this is a house where there are two people in it -- and I will put that to one side for a moment -- they talk to the security guard, apparently now they are going to do the thing multiple times because the government is dribbling out facts, and they say, well, who lives in the house? Ms. Maxwell does. Okay? She lives in the house. What do you -- how do you get groceries and so forth? I go out and get them for her.

So let's stop and think about this, your Honor. The government's allegation is that the person who is aware of a criminal investigation in the United States, has her counsel in

regular contact with the government, is removed in a property in the United States. That's the opposite of hiding. So we think that those kinds of facts, I'm sure, your Honor, if your Honor decides to keep the proceedings open and give us a chance to come on some issues, I'm sure we will have some more facts tomorrow and the next day, all with the disclaimer, we just learned this, your Honor. They have been investigating this case for ten years, your Honor, okay?

So let me turn now to another factor that the government made argument about briefly, two more factors under 31(g)(3), the history and characteristics of the defendant. We heard several times that there was a -- that detention should be warranted because there is a perjury charge. Very quickly, your Honor, we submit this does not tip the balance in the 3142 analysis that the court has to perform.

First and foremost, the defendant is, of course, presumed innocent; and, secondly, the allegation and nature of the perjury, if the court has been through the indictment, is someone who denies guilt, who says they are innocent, is asked in a deposition did you do that and says no, the government charges them with perjury. That is not -- other than the fact that it's an indicted charge, they are still entitled to the weight the court would give a not indicted charge. That's all the weight it should be given .

Let me turn to another factor that the government

mentioned in its presentation, both in its papers and today, that relates to 3142(g)(3), which is the defendant's financial situation.

Again, when you look at the case law, which is not addressed by the government at all, this is a person who has passports that can be surrendered, who has travel that can be restricted, who has citizenship that the courts have taking account of, and does have financial means. Does she have the financial means that the government says she has? We doubt it. But does she have hundreds of millions of dollars like those in the *Madoff* and *Dreier* case? No.

But it doesn't matter. Even if the court were to assume for purposes of today's proceeding that she has the means that the government claims she does, it does not affect the analysis. That is to be addressed in conditions, to be addressed if the court requires it, through verifications and further proceedings before the court.

And let me just address some of the allegations made in the government's brief about her financial situation. The government goes out and arrests our client even though she would have voluntarily surrendered, arrests her the day before a federal holiday, so she spends extra time in the New Hampshire prison before being transported here, and then says, how come you don't have a full account of your financial condition? How come, when Pretrial Services asked about it,

you can't, off the top of your head, explain your financial condition to them? You must be lying. That assertion is absurd.

We have been working since our client was detained, with our client, trying to access family members to put, as best we could, a financial picture before the court to the extent it is relevant to this application and only this application. This bail proceeding should not turn into some mini investigation of our client's finances. The government has had ten years to investigate my client.

Let me address some of the specific allegations in the government's brief. They point to a sale of property in 2016. According to the government, the property was sold for $15 million. There is no secret about that. Those records are out there. The government claims our client cleared $14 million from that in 2016 and apparently has it all today, which would probably make it the first New York real estate transaction to that effect. There has been liabilities. There has been expenses. Our client has been through extensive, substantial litigation all over this country denying these claims. We think the number is far less than what the government asserts. But even taking that number, it's a number far lower than that in *Khashoggi*, far lower than that in *Dreier*, far lower than in many cases, and the impact of that, in the court's discretion, should be addressed by bail conditions.

The government also says, well, she has 15 different bank accounts -- and here we get some hedging language -- that are by or associated with her. No detail, no explanation to the court, just more dirt. Well, she has three bank accounts that she disclosed. She believes that there are more, for example, with respect to the not-for-profit that she ran for almost a decade before she was forced to shut it down because of the issues in the media and the attention and the firestorm. So it is some number less. And if it's important to the court, we will do our best to pull it together. But under the relevant cases, it doesn't change the analysis.

And then we go through the last one, your Honor. They say in their brief that she did transfers of funds. One was a transfer of 500,000. We believe that what that is was a bond maturing. So when a bond matures, it is transferred out.

And then there was another one, and the government sort of changes its mind between its opening brief and its reply brief and I'm sure by tomorrow they will have some new speculation for your Honor, but essentially let's call it a several hundred thousand transfer out of and account in June and July of 2019. What's that refer to? It refers to one of the themes we have been talking about in our submission and today your Honor. When Mr. Epstein was arrested, it had all kinds of effects on our client, one of which was that the bank in question referenced in the government's submission dropped

her. Well, when the bank drops you, you have to transfer your funds out. That's true. That's what happened. So there is nothing in there that's sinister, there is nothing in there that shows an intent to evade, an intent to evade, and nothing there that we think warrants detention.

One last point on the financial stuff, your Honor, if I might. In the reply brief, we get a new allegation that an SDAR, a foreign filing was made in 2018 and 2019, disclosing that our client had a foreign bank account. Let's stop there. Our client makes a legally required filing with the Treasury Department, obeys the law, and discloses a foreign bank account, and the government is claiming that's evidence of hiding. This is all upside-down, your Honor. These are not factors to be considered in exercising your discretion under 3142.

Let me turn very quickly to the other two factors that are relevant for today's purposes because, as your Honor has pointed out, the government is not proceeding on a dangerousness claim. That is the (g)(1) and (g)(2) factors, the nature and circumstances of the case, and the weight of the evidence.

Here, I think we -- if you bear with me a moment, your Honor, here, one thing to keep in mind is an observation Judge Raggi made in the *Sabhnani* case, at page 77, where she said, "The more effectively a court can physically restrain the

defendant, the less important it becomes to identify and restrain each and every asset over which defendants may exercise some control in order to mitigate risk of flight." So if the court -- and we have suggested them, but they may be modified by the court -- can put in place stringent bail conditions, we don't need to have a side-long, month-long hearing about my client's assets which is just designed to keep her in detention. That was an observation by Judge Raggi in *Sabhnani*.

Judge, very quickly on the nature and circumstances of the offense and the weight of the evidence, we don't think, your Honor, this is the place to litigate legal motions. This is a bail hearing. It is not the place to litigate complex legal questions that we will be presenting to your Honor. It's very soon on the motion schedule, and we thank the court for agreeing to the schedule. But there are a few things that are worth pointing out.

We believe there are very significant motions here that will affect whether this indictment survives at all or the shape of this indictment and, given the government's representation that it is not planning to supersede, will affect the shape of the entire case, or any case at all that proceeds before the court at trial, if there is a trial. That is exactly what we submit the court can consider, again, in exercising its discretion as to the weight of the evidence.

We believe there are significant motions relating to the reach of the NPA, which we are not going to litigate here before your Honor in a bail proceeding, that are not even foreclosed by the cases the government does cite to you. They cite to you the -- I'm going to skip this one, the *Annabi* case, A-N-N-A-B-I case, which says, "The plea agreement binds only the office of the U.S. Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction," and that in part is going to be our argument. So we will make it to your Honor at the appropriate time. For today's purposes, it should be in the mix in evaluating the weight of the evidence as should the points I just made about the perjury charge and we think that there are other significant legal challenges to the indictment.

We also think there are significant issues with the weight of the evidence. The government chose to indict conduct that's 25 years old, your Honor. You will see when you get our motions that this, we think, is an effort to dance around the NPA, to come into an earlier time period, a related time period. It's all tactics. That's all this is about. This case is about tactics. It's an effort to dance around the NPA. But the fact of the matter is the government --

THE COURT: Mr. Cohen, I'm sorry, by that do you mean that the time period charged is not covered by the NPA.

MR. COHEN: Right. Exactly. There is going to be

litigation before your Honor about what is in the NPA, and the government, we expect, is going to take the position that unlike '07 is covered and nothing else. We disagree with that, which we will lay out for your Honor. What do they do? They decide we will reach back and indict '94 to '97, totally tactical, your Honor. So now we have a case where the conduct is 25 years old, no tapes, no video, none of the sort of things you would expect in that age of case, that we are going to have to defend, and we are going to defend. And I think it goes to the court's consideration of the weight in the context of the only application that's before your Honor, which is how to weigh the 3142 factors with the structure of the statute, with the guidance of the Second Circuit and the Supreme Court, which is in favor of bail, in favor of bail on appropriate conditions.

So we submit that the package we laid out for the court is sufficient that we are certainly willing if the court deems it necessary to leave the proceeding open and we think we could be back before the court within a week if that is what the court wants or there is more detail which has been hammered by the fact that our client has been, by design, by design, kept in custody. And let me just give your Honor a little flavor.

THE COURT: Wait, Mr. Cohen. I missed that last point could you repeat it, please.

MR. COHEN: I'm sorry. If the court desires to leave the proceeding open for a week and allow us to come back, if the court has concerns about the number of suretors, for example, verification information, information about financial issues, we think that, now that we have some ability to breathe a little bit, that we should be able to pull this together for the court's consideration. We came forward with the best package we could put together on a limited notice with a client who was arrested, held in custody, has been since she came to the MDC held in, I will call it, the equivalent of the layman's term of solitary confinement. There is probably a BOP word, like administrative seg., or some other word they have for it now.

We have had a client who has been kept alone in a room with the lights on all the time, is not allowed to speak with us in the jail at all, wasn't allowed to shower for 72 hours, had her legal materials taken away from her, only recently given back. So working with that, we have been trying to answer questions about financial situation and others, but it is very difficult, your Honor, under circumstances that are of the government's creation, of the government's creation, and we --

THE COURT: So I do want to understand that point. I think that's the "by design" point that you are making. Just for clarity, I understand that there was consent to detention

originally without prejudice obviously for precisely the proceeding we are having, but it sounded like you were suggesting that her current detention was in some way by design to prevent you from providing a full picture of her financial situation. Is that the implication you are making?

MR. COHEN: No, I am not saying that, your Honor. I am not going that far. What I am saying is, when you have a client who will voluntary surrender, who is staying in the country despite an investigation, and the government instead chooses to arrest her and detain her, that limits in the early instances your access to the client. It is complicated by the COVID crisis and the other factors your Honor has pointed out in *Stephens* and in *Williams-Bethea*, and so it is very hard for us to pull together this financial information, and we have done it as quickly as we could before the court. But the notion that my client should have been able to answer off the top of her head the questions from Pretrial Services about a real estate transaction, for example, just doesn't make any sense. That's the point we are making.

THE COURT: Okay.

MR. COHEN: One last point in that regard, your Honor, in the schedule we set today -- thank you, your Honor, for approving that -- the government is saying that it needs at least until November to complete all discovery, including electronic discovery. They have told us that there are two

investigations. There is the investigation of our client and there is the investigation of Mr. Epstein. And they are, in the government's words, in our words together, voluminous materials. We haven't seen any of it yet, but voluminous, including voluminous electronic materials. The notion that we would be able to in any meaningful way review these with our client to prepare the case for motion and for trial under the current pandemic situation is just not realistic. It is not meaningful. It is not fair. And I should say, as your Honor noted, in the *Stephens* case, we are not faulting the Bureau of Prisons. We are not faulting the Marshal Service. We understand they are doing the best they can under the circumstances. But this is just not realistic. We have conduct that's alleged to be 25 years old. You have extensive discovery that's going to take the government, if they hit the deadlines your Honor set -- and we all know that sometimes it doesn't happen -- four and a half months to provide, and the government wants our client to remain in custody that whole time, without being able to meet with us in person, with limited access in some form of administrative seg., apparently because they are afraid of what happened with Mr. Epstein, I don't know, and it is just not a realistic way to prepare a case, particularly, your Honor, when, as we submit, the conditions and combination of conditions to secure her release can be satisfied here under your Honor's guidance.

And in response to that, the government said, well, too bad, COVID crisis, too bad, Ms. Maxwell, we are not going to let you out. We are not going to let you out because you might get infected, we are not going to let you out because, you know, because it will be tough preparing your trial. And they cite to your Honor, in reply, two pages of cases, very limited parentheticals. If you actually read those cases, they are totally different from our situation, your Honor. The cases they cite on health risks in the prison environment, they cite 14 cases, 12 of them are dangerousness cases, people who are convicted of multiple felonies, including weapons felonies. The courts in those cases determined the COVID factors do not outweigh that analysis. They cite nine cases on the preparation and access to counsel. Several of them are dangerousness cases, and the other ones that have some discussion of flight risk are so extremely different from our case as to not be relevant.

Judge, I don't know how we could possibly prepare this case, getting four months of discovery, including electronic discovery, and in over 25 years of conduct, with a client who is in custody, who we can't meet with in person. And I'm not faulting the BOP. I understand why they have to do what they have to do, and your Honor has made the same point, but it is just we have to be in the real world here. We have to --

THE COURT: Whether defendants are detained because of

risk of flight or dangerousness, they are still entitled to the same Sixth Amendment rights to access defense counsel to prepare their case.

MR. COHEN: Of course, your Honor. My point was a more narrow point. My point is that the facts in those cases are different from our case in a meaningful way and the court was doing a different evaluation. That was the point I was making on this case.

So in conclusion, we believe this is a compelling case for bail. We believe that the government, which has the burden of persuasion that never shifts, has not made a showing as required, that our client is a risk of flight. When you consider the risk, as Judge Raggi put it, in *Sabhnani*, the actual risk of flight, not fantasy and not speculation, when you consider that the only factors they really point to are ones that the cases have already addressed, such as international travel and passports.

We also submit that the government has not carried its burden of showing there is no condition or combination of conditions that secure release.

So we would ask the court to grant bail today. And if the court needs more information from us, we would respectfully request that the court leave the proceeding open for a week so that we can try to satisfy the court because we want to.

Thank you, your Honor, for your time.

THE COURT: All right. Thank you, Mr. Cohen.

Ms. Moe, would the government like a brief reply?

MS. MOE: Yes, your Honor. Thank you very much.

Your Honor, I want to begin by addressing head on the notion that the government's presentation in this case is somehow about spins or about throwing dirt or about the media. Your Honor, my colleagues and I are appearing today on behalf of the United States Attorney's Office of the Southern District of New York. Our presentation of the defendant's conduct is detailed in an indictment that was returned by a grand jury in this court. These are the facts. It is not dirt. It is not spin. That is the evidence and that is what we have proffered to the court.

And the notion that anyone could read the indictment that has been returned in this case and now reach the conclusion that an adult woman, cultivating the traffic of underage girls, knowing that they will be sexually abused and exploited by an adult man, and conclude that that is chilling conduct, that is, on the face of the indictment, your Honor.

Turning to the facts we have proffered to the court about the defendant's finances, and particularly about the defendant's conduct in hiding, it appears, your Honor, that it is undisputed that the defendant was living in hiding and took those actions. There cannot be any spin or characterization of this spin. Those are the facts that appear to be undisputed.

Turning to several specific points, your Honor, that I would like to respond to. I want to address the notion that the defendant would have surrendered if the government had asked her to. As defense counsel conceded, no offer along those lines was ever made. And of course the government doesn't have to accept the defense counsel's representation that their client would surrender.

In fact, the fact that the government took these measures to arrest the defendant reflects how seriously the government takes the risk of the defendant of flight. Why on earth would the government notify the defendant through her counsel that she was about to be indicted and arrested if the government had serious concerns that she was a risk of flight? That is exactly what occurred here.

In addition, it is interesting that defense counsel notes that it should have been obvious to the government that the defendant would have surrendered when, at the same time, in civil litigation in this district, defense counsel declined to accept service on behalf of plaintiffs who were seeking to sue the defendant in connection with some of these allegations, and they were required to seek leave of the court to serve the defendant through their counsel.

Your Honor, turning to the question of the defendant's finances there is still at this point no substantive response regarding defendant's finances or about the lack of candor to

the court, significantly.

And while we recognize that it appears that the defendant's extensive resources may be in complicated banking records, at a basic level, the defense argument is that she cannot remember off the top of her head just how many millions of dollars she has. That should cause the court serious concern.

A bail hearing, your Honor, is not an opportunity for the defendant to slowly reveal information until the court deems it sufficient. That is not sufficient process here. That is not appropriate. This information is coming out in dribs and drabs, and defendant should not be in a position to slowly but surely concede, as the government reveals, that she has been less than candid with the court about her finances. There are serious concerns here.

With respect to the notion that the defendant could just surrender her passports, there are of course no limitations this court could set on a foreign government issuing travel documents to defendant or accepting her if she were to enter into that country.

And finally, your Honor, with respect to the case law that defense has cited, they ignore the obvious comparator case, which is Judge Berman's decision regarding Jeffrey Epstein, who was arrested both on risk of flight grounds and on dangerousness grounds. And as Judge Berman detailed, the

detention was appropriate in that case on risk of flight alone. And, again, that conduct was -- at that point significant time had passed, and Jeffrey Epstein was not a foreign citizen.

I want to respond with respect to the NPA. At this point, your Honor, the defense has articulated no legal basis to suggest that the defendant is shielded by the nonprosecution agreement, and it simply doesn't make sense that the decision in this case is somehow tactical to avoid concerns about the NPA, when the government charged Jeffrey Epstein with conduct that fell within the scope of the time period within the nonprosecution agreement and stated before the court in connection with bail proceedings in that matter that this is the government's strong view that that agreement does not bind this office whatsoever with respect to any kind of conduct or any kind of individual. That agreement does not bind this office whatsoever.

Your Honor, in short, it is important for the court to evaluate the question of bail given the totality of the circumstances. The defense's argument, in essence, attempts to view each of the government's arguments as absolute. But when you review the totality of the circumstances -- the defendant's extensive international ties, her conduct over the past year, her unknown finances and unwillingness to be more candid with the court about her resources to flee, her specific bail proposal which provides absolutely no security to the court --

it is clear that defendant has not met her burden to rebut the presumption of detention in this case. The government urges the court to detain this defendant, consistent with the recommendation of Pretrial Services and the request of the victims. It is important, your Honor, that there be a trial in this case, and the government has serious concerns that the defendant will flee if afforded the opportunity.

Thank you, your Honor.

THE COURT: Briefly, Ms. Moe, just a couple of legal questions.

Mr. Cohen argued that you failed to address directly the standards, the burdens under the statutory provision, and that you have avoided the fact of the government continuing to carry the burden by a preponderance of the evidence with respect to risk of flight and whether there are measures that could assure appearance. Do you dispute anything legally suggested by Mr. Cohen in terms of the standard that applies?

MS. MOE: Your Honor, the government submits that the standard is clear. It is the defendant's burden of production to rebut the presumption that there are no set of conditions that could reasonably assure her continued appearance in this case. The government has the ultimate burden of persuasion, but it is the defendant's burden of production. She has failed to meet that burden for the reasons we set forth in our briefing and arguments today.

THE COURT: Okay.

And then the other legal question I had, I think Mr. Cohen began his presentation by noting -- by raising case law suggesting the lack of relevance of the statements of the alleged victims, although fully recognizing their entitlement under the law to be heard. What is the government's position with respect to the relevance of the alleged victim statements in the 3142 analysis?

MS. MOE: Your Honor, the government has not proffered victim's testimony or information in an effort to support its motion. To the contrary, the victims have appeared consistent with their rights under the Crime Victims Rights Act. Of course, as we noted in our reply brief, it is very important to the government that the victims receive justice in this case and that there be a trial so that that could happen. That is very important to the government, and we respectfully submit that the court should take that into account. However, again, the victims' participation in this proceeding is pursuant to their rights under the Crime Victims Rights Act. It is not part of the government's presentation in this case.

THE COURT: Okay. So I should not consider it -- should not consider the substance of the statements in the overall bail analysis.

MS. MOE: Your Honor, with respect to the nature and circumstances of the offense, the offense conduct, the

government submits that the statements of the victims certainly shed light on the gravity of the offense conduct, the harm it has caused, and how serious that conduct is. The court can and should take that into account. My point was a procedural one; that it is not the case that the government is submitting this as evidence in support of its motion, but it is certainly the case that the victims' experiences, the harms that they have been caused can be considered by the court with respect to the nature and circumstances of the offense conduct, which we submit is gravely serious.

THE COURT: All right. Thank you.

Mr. Cohen, very briefly, any final points?

MR. COHEN: Yes, your Honor, very briefly. I won't get into it, but I don't think she just answered your question about what they are doing with respect to the CVRA victims, but I will leave that to the court.

Just very quickly, two points, your Honor.

The government says in its response now that the case to be relied upon and distinguished is *U.S. v. Epstein*. They didn't raise it in their opening memorandum or their reply or in their oral presentation before your Honor. To the extent your Honor considers it, and we have certainly looked at it and the transcript of the proceeding before Judge Berman, most of that case is about dangerousness, your Honor, which is something the government is expressly not proceeding under here

because the conduct is 25 years old, among other reasons.

And as to the risk of flight factors, Mr. Epstein had a prior felony conviction for conduct similar to that alleged in the indictment. The package before Judge Berman was only two suretors, and any properties that were offered to Judge Berman at the proceeding were already subject to forfeiture and so could not be proposed. So it is a very, very different situation in that case which was not raised by the government, and that's why we didn't address it.

The last point which I meant to raise earlier, your Honor, and I will end with this, and I should have raised it earlier, what we sometimes see in bail cases, and I'm sure your Honor has seen this, is the government says, well, the defendant was hiding and we have evidence, your Honor, that the defendant was making plans to leave the country. That is the situation, frankly, in the *U.S. v. Zarger* case, the case by Judge Gleeson in 2000, that the government cites in its brief, but of course doesn't discuss the facts. There is nothing to that effect here. To the contrary, the defendant, our client, is sitting in New Hampshire at the time of the arrest. So there is no evidence that there was some sort of imminence for the court to consider.

So not to repeat all the arguments we made, we thank the court for your time and for reading the submissions and listening, and we just think, Judge, when you step back, the

concerns raised by the government can be addressed, they have not carried their burden, and this is really a case that should be subject to strict bail conditions to be set by the court, among other things, to give us any reasonable chance of fighting this -- preparing and fighting this case to trial.

Thank you, your Honor.

THE COURT: All right. Thank you, counsel.

I am prepared to make my ruling.

Several provisions of federal law govern the court's determination whether to detain the defendant or release her on bail pending trial. A court must apply that law equally to all defendants no matter how high profile the case or well off the defendant. It is therefore important to begin here with a clear articulation of the governing law.

It is also important to bear in mind that Ms. Maxwell, like all defendants, is entitled to a full presumption of innocence, that is, she is presumed innocent and the only grounds for detention at this stage are, under the law, risk of flight or danger to the community.

I may consider the weight of the evidence proffered by the government at this stage in making this determination, but unless this matter is resolved by a plea, it will remain entirely for a jury to decide the question of Ms. Maxwell's guilt as to the charges contained in the indictment.

Turning to the government's standard under Title 18 of

the United States Code, Section 3142, the court may order detention only if it finds that no conditions or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person in the community.

In making a bail determination the court must consider the defendant's dangerousness, if that's raised, and the defendant's risk of flight. A finding of dangerousness, if that were an issue, must be supported by clear and convincing evidence. A finding that a defendant is a flight risk must be supported by a preponderance of the evidence.

In a case such as this one, where the defendant is accused of certain offenses involving a minor victim, federal law requires that it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required. That's citing 18 U.S.C. 3142(a)(3).

The Second Circuit has explained that, in a presumption case such as this, a defendant bears a limited burden of production, not a burden of persuasion, to rebut the presumption by coming forward with evidence that she does not pose a danger to the community or a risk of flight. Furthermore, once a defendant has met her burden of production relating to these two factors, the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court. But

even in a presumption case, the government retains the ultimate burden of persuasion by clear and convincing evidence that the defendant presents a danger to the community, if that were an issue, and a showing by the lesser standard of a preponderance of the evidence that the defendant presents a risk of flight.

The statute further mandates that the court take into account four factors in making its determination: the nature and circumstances of the offense charged, the weight of the evidence against the person, the history and characteristics of the person, and the nature and circumstances of the danger to any person or the community that would be posed by the person's release. That is 18 U.S.C. 3142(g).

Now that the court has laid out the federal statutory requirements that guide its bail determination, it turns to the government's specific application in this case for detention pending trial.

The government does not argue, as has been repeatedly made clear today, for detention based on danger to the community. Instead, it rests its argument for detention on Ms. Maxwell's alleged risk of flight. As noted in a flight-risk case, the government bears the burden of proving by a preponderance of the evidence both that the defendant presents an actual risk of flight and that no condition or combination of conditions could be imposed on the defendant that would reasonably assure her presence in court. And I'm

quoting there from *United States v. Boustani*, 932 F.3d 79, (2d Cir. 2019).

The court concludes as follows:

First, the nature and circumstances of the offense here weigh in favor of detention. As noted, the crimes involving minor victims that Ms. Maxwell has been accused of are serious enough to trigger a statutory presumption in favor of detention. And to reiterate, Ms. Maxwell is presumed innocent until proven guilty, but if she were convicted of these crimes, the sentences she faces is substantial enough to incentivize her to flee. In total, Ms. Maxwell, who is 58 years old, faces up to a 35-year maximum term of imprisonment if convicted. And even if sentences are run concurrently, she would still face up to a decade of incarceration.

Second, noting again that Ms. Maxwell is entitled to the full presumption of innocence, it 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 multiple victims who provided detailed accounts of Ms. Maxwell's involvement in serious crimes. The government also proffers that this witness testimony will be corroborated by significant contemporaneous documentary evidence. While the defense states that it intends to assert

legal defenses based on untimeliness and the nonprosecution agreement, those arguments are asserted in a conclusory fashion and have been directly countered by the government with citations to law. Although the court does not prejudge these matters at this stage, based on what's been asserted thus far, they do not undermine the strength of the government's case at the bail determination stage. Ms. Maxwell is now aware of the potential strength of the government's case against her and arguments countering these defenses, thus creating a risk of flight.

Third, the court considers the defendant's history and characteristics and finds that paramount in a conclusion that Ms. Maxwell poses a risk of flight. Ms. Maxwell has substantial international ties and could facilitate living abroad if she were to flee the United States. She holds multiple foreign citizenships, has familial and personal connections abroad, and owns at least one foreign property of significant value. And, in particular, she is a citizen of France, a nation that does not appear to extradite its citizens.

Moreover, as the government has detailed in its written submission and today, Ms. Maxwell possesses extraordinary financial resources which could provide her the means to flee the country despite COVID-19-related travel restriction. Given the government's evidence, the court

believes that the representations made to Pretrial Services regarding the defendant's finances likely do not provide a complete and candid picture of the resources available.

Additionally, while Ms. Maxwell does have some family and personal connections to the United States, the absence of any dependents, significant family ties or employment in the United States leads the court to conclude that flight would not pose an insurmountable burden for her, as is often the case in assessments of risk of flight.

In sum, the combination of the seriousness of the crime, the potential length of the sentence, the strength of the government's case at this stage, the defendant's foreign connections, and this defendant's substantial financial resources all create both the motive and opportunity to flee.

Now, in the face of this evidence, the defendant maintains she is not a flight risk. She notes that even after the arrest of Jeffrey Epstein and even after the implication by authorities and the press that there was an ongoing investigation into his alleged coconspirators and that she may be implicated, she did not leave the United States. She hasn't traveled, apparently, outside the United States in over a year

To the contrary, through counsel, she has stayed in contact with the government. The government doesn't contest these factual representations. The fact that Ms. Maxwell did not flee previously, given these circumstances, is a

significant argument by the defense and it is a relevant consideration, but the court does not give it controlling weight here.

To begin, in spite of the Epstein prosecution, Ms. Maxwell herself may have expected to avoid prosecution. After all, she was not named in the original indictment. The case was therefore distinguishable from *United States v. Friedman*, 837 F.2d 48 (2d Cir. 1988), a case where release was ordered in part because the defendant took no steps to flee after a search warrant was executed against the defendant and he had been arrested on state charges several weeks earlier.

Likewise, the mere fact that she stayed in contact with the government means little if that was an effort to stave off indictment and she did not provide the government with her whereabouts. Circumstances of her arrest, as discussed, may cast some doubt on the claim that she was not hiding from the government, a claim that she makes throughout the papers and here today, but even if true, the reality that Ms. Maxwell may face such serious charges herself may not have set in until after she was actually indicted.

Moreover, Ms. Maxwell's argument rests on a speculative premise that prior to indictment Ms. Maxwell had as clear an understanding as she does now of the serious nature of the charges, the potential sentence she may face, and the strength of the government's case. Whatever calculation and

incentive she had before this indictment may very well have changed after it. In other words, her federal indictment may well change her earlier decisions and, given the defendant's resources, the court concludes that Ms. Maxwell poses a substantial actual risk of flight.

Having made this determination, the court next turns to whether the government has met its burden to show by a preponderance of the evidence that no combination of conditions could reasonably assure the defendant's presence. The court is persuaded that the government has met this burden and concludes that even the most restrictive conditions of release would be insufficient.

As an initial matter, the financial component of Ms. Maxwell's proposed bail package appears to represent a relatively small component of the access available to her and is secured only by a foreign property said to be worth about several million dollars. But even a substantially larger package would be insufficient. The extent of her financial resources is demonstrated by some of the transactions and bank accounts discussed in the government's submission and here today, and Ms. Maxwell has apparently failed to submit a full accounting or even a close to full accounting of her financial situation. She has provided the court with scarce information about the financial information of her proposed cosigners, for example. Without a clear picture of Ms. Maxwell's finances and

the resources available to her, it is practically impossible to set financial bail conditions that could reasonably assure her appearance in court.

Even if the picture of her financial resources were not opaque, as it is, detention would still be appropriate. Personally, the defendant not only has significant financial resources, but has demonstrated sophistication in hiding those resources and herself. After the arrest of Jeffrey Epstein, Ms. Maxwell retreated from view. She moved to New England, changing locations on multiple occasions, and appears to have made anonymous transactions both big and small. The defense said that she did all of this not to hide from the government but to maintain her privacy and avoid public and press scrutiny. Even assuming that Ms. Maxwell only wanted to hide from the press and public, an assumption that the court does not share, but even assuming that's the case, her 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.

Because of these concerns, even a bail package with electronic monitoring and home security guards would be insufficient. Were she to flee, the defendant could simply remove the monitoring bracelet and, as other courts have observed, home detention with electronic monitoring does not prevent flight. At best it limits a fleeing defendant's head

start. Likewise, the possibility that Ms. Maxwell could evade security guards or monitoring is a significant one.

The court finds by a preponderance of the evidence that no combination of conditions could reasonably assure her presence in court. The risks are simply too great.

Defense cites a number of cases, including *Esposito*, *Dreier*, and *Madoff*, as examples of serious and high-profile prosecutions where the courts, over the government's objection, granted bail to defendants with significant financial resources. But unlike those defendants, Ms. Maxwell possesses significant foreign connections.

This case is distinguishable for other reasons, as well. For example, the risk of flight in *Esposito* appears to have been based on the resources available to defendant, not foreign connections or experience and a record of hiding from being found.

In *Madoff*, the defendant had already been released on a bail package agreed to by the parties for a considerable period of time before the government sought detention. The court there found there were no circumstances in the intervening period showing that the defendant had become a flight risk. Because of these crucial factual differences, the court finds the cases not on point and not persuasive.

Finally, in arguing for release, the defense raises the challenges and risks posed by the COVID-19 pandemic. The

court is greatly concern by the Bureau of Prisons' ability to keep inmates and detainees safe during the health crisis and has found those considerations to be significant in other cases. The argument nonetheless fails in this case for several reasons. Most importantly, unlike almost all of the cases in which this court has granted release as a result of COVID-19, Ms. Maxwell has not argued that her age or underlying health conditions make her particularly susceptible to medical risk from the virus. In other words, she doesn't argue that she is differently situated than many other federal inmates with respect to the risk posed by COVID-19. In light of the substantial reasons that I have already identified favoring Ms. Maxwell's detention and her not making any arguments based on her age or health, the COVID-19 pandemic alone does not provide grounds for her release.

Second, the defense argues that pretrial release is necessary for Ms. Maxwell to prepare her defense, as COVID-19-related restrictions at the prison at which she is held, the MDC, will hamper her ability to meet counsel and review documents. The court notes that this case is at the early stages. There will be no hearings, let alone a trial, for a significant period of time. The case does stand in stark contrast to *United States v. Stephens*, invoked by the defense, in which this court at the beginning of the pandemic granted temporary release to a defendant who was scheduled to have an

evidentiary hearing within one week. In contrast, the defendant is in the same position as any newly indicted defendant who is incarcerated in terms of the need to access counsel. Indeed the defense's logic, all pretrial detainees currently incarcerated at MDC and any federal facility would need to be released to prepare their defense. To the contrary, the MDC has continued to develop procedures to ensure attorney-client access at the facility, and the defendants detained at MDC are able to conduct video and phone conferences with their attorneys. There is ongoing litigation before Judge Brodie in the Eastern District of New York about the adequacy of attorney-client access at the MDC. That is case No. 19 Civ. 660. Public filings from the court-appointed mediator in that case describe the availability of legal phone calls and video calls, video conferences for the purposes of reviewing discovery between detained defendants and their counsel, and that same report indicates that MDC is currently developing a plan to resume in-person attorney-client visits in the near future.

At this stage in this case and at this point in the pandemic in New York City, these measures are sufficient to ensure Ms. Maxwell has access to her counsel. To further assuage these concerns, the court orders the government in this case, and frankly all others before it, to work with the defense to provide adequate communication between counsel and

client. If the defense finds this process inadequate in any way, it may make a specific application to this court for further relief.

In sum and for all of the foregoing reasons, the court finds that the government has met its burden of showing by a preponderance of the evidence that the defendant is a risk of flight and that no combination of conditions could reasonably assure the presence of the defendant at court.

The defendant is hereby ordered to be detained pending trial.

Counsel, is there anything else that I can address at this time?

Mr. Cohen?

MR. COHEN: Not from the defense, your Honor.

THE COURT: Thank you.

Ms. Moe?

MS. MOE: Not from the government, your Honor. Thank you.

THE COURT: All right. My thanks to counsel for your advocacy and my thanks to the staff of the court who worked hard to provide the access to these proceedings in the pandemic.

We are hereby adjourned.

oOo

Exhibit E

Doc. 97
Memorandum of Ghislaine Maxwell in Support of Her Renewed Motion for Bail

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, v. GHISLAINE MAXWELL, Defendant.	20 Cr. 330 (AJN)

MEMORANDUM OF GHISLAINE MAXWELL
IN SUPPORT OF HER RENEWED MOTION FOR BAIL

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PRELIMINARY STATEMENT

Ghislaine Maxwell respectfully submits this Memorandum in Support of her Renewed Motion for Release on Bail.

As set forth more fully below, Ms. Maxwell is proposing an expansive set of bail conditions that is more than adequate to address any concern regarding risk of flight and reasonably assure Ms. Maxwell's presence in court. Ms. Maxwell also provides compelling additional information in this submission, not available at the time of the initial bail hearing (which was held 12 days after her arrest), that squarely addresses each of the Court's concerns from the initial hearing and fully supports her release on the proposed bail conditions. This information includes: (1) evidence of Ms. Maxwell's significant family ties in the United States; (2) a detailed financial report, which has also been reviewed by a former IRS CID special agent, concerning her financial condition and assets, and those of her spouse, for the last five years; (3) irrevocable waivers of her right to contest extradition from the United Kingdom and France and expert opinions stating that it would be highly unlikely that Ms. Maxwell would be able to resist extradition in the implausible event of her fleeing to either country; (4) evidence rebutting the Government's contention that Ms. Maxwell attempted to evade detection by law enforcement prior to her arrest; and (5) a discussion of the weakness of the government's case against Ms. Maxwell, including the lack of corroborative, contemporaneous documentary evidence in support of the three accusers.

Ms. Maxwell vehemently maintains her innocence and is committed to defending herself. She wants nothing more than to remain in this country to fight the allegations against her, which are based on the uncorroborated testimony of a handful of witnesses about events that took place over 25 years ago. The Court should grant Ms. Maxwell bail on the restrictive conditions proposed below to ensure her constitutional right to prepare her defense.

The Proposed Bail Conditions

Ms. Maxwell now proposes the following $28.5 million bail package, which is exceptional in its scope and puts at risk everything that Ms. Maxwell has—all of her and her spouse's assets, her family's livelihood, and the financial security of her closest friends and family—if she were to flee, which she has no intention of doing.

- A $22.5 million personal recognizance bond co-signed by Ms. Maxwell and her spouse, and secured by approximately $8 million in property and $500,000 in cash. As noted in the financial report, the $22.5 million figure represents the value of all of Ms. Maxwell and her spouse's assets. The three properties securing the bond include all of the real property that Ms. Maxwell and her spouse own in the United States, including their primary family residence.

- Five additional bonds totaling approximately $5 million co-signed by seven of Ms. Maxwell's closest friends and family members. The individual bonds are in amounts that would cause significant financial hardship to these sureties if Ms. Maxwell were to flee. These include:

  - A $1.5 million bond co-signed by [redacted] both U.S. citizens and residents, and fully secured by [redacted] primary residence [redacted]

  - A $3.5 million bond co-signed by [redacted] who are U.K. citizens and residents. The $3.5 million sum represents virtually all of [redacted] assets. [redacted] is the guarantor of the existing mortgages on these assets.

  - A $25,000 bond co-signed by [redacted], a U.S. citizen and resident, and fully secured by $25,000 in cash.

  - A $25,000 bond signed by [redacted], a close family friend, and fully secured by $25,000 in cash. The cash security is money that [redacted] planned to set aside for his own daughter's future, but he is prepared to pledge it for Ms. Maxwell.

  - A $2,000 bond signed by [redacted], a close family friend, who is a U.S. citizen and resident, and fully secured by $2,000 in cash.

- A $1 million bond posted by the security company that would provide security services to Ms. Maxwell if she is granted bail and transferred to restrictive home confinement. This bond is significant as we are unaware of a security company ever posting its own bond in support of a bail application. The head of the security

company has confirmed that they have never done this for any client, and that he is willing to do so for Ms. Maxwell because he is confident that she will not try to flee.

- Ms. Maxwell will remain in the custody of [redacted] a U.S. citizen who has lived in the United States for 40 years. [redacted] will serve as Ms. Maxwell's third-party custodian under 18 U.S.C. § 3142(c)(1)(B)(i) and will live with Ms. Maxwell in a residence in New York City until this case has concluded. We have identified an appropriate residence in the Eastern District of New York that has been cleared by Ms. Maxwell's security company.

- Travel restricted to the Southern and Eastern Districts of New York, and limited as necessary to appear in court, attend meetings with counsel, and visit with doctors/psychiatrists/dentists, and upon approval by the Court or Pretrial Services.

- Surrender of all travel documents with no new applications.

- Ms. Maxwell will provide the Court irrevocable written waivers of her right to contest extradition in France and the United Kingdom.

- Strict supervision by Pretrial Services.

- Home confinement at her residence with electronic GPS monitoring.

- Visitors to be approved in advance by Pretrial Services, with counsel and family members to be pre-approved.

- Such other terms as the Court may deem appropriate under 18 U.S.C. § 3142.

For her own safety, Ms. Maxwell will also have on-premises security guards 24 hours a day, 7 days a week. The security guards will prevent Ms. Maxwell from leaving the residence at any time without prior approval by the Court or Pretrial Services and will escort her when she is authorized to leave. If the Court wishes to make private security a condition of her bond, the guards could report to Pretrial Services.[1] We believe these conditions are more than sufficient to reasonably assure Ms. Maxwell's presence in court.

[1] As we argued in our initial bail application, this case involves the limited circumstance under which the Second Circuit approved granting pretrial release to a defendant on the condition that she pays for private armed security guards. *United States v. Boustani*, 932 F.3d 79, 82 (2d Cir. 2019) (defendant who "is deemed to be a flight risk primarily *because of* [her] wealth . . . may be released on such a condition only where, *but for* [her] wealth, [s]he would not have been detained" (emphasis in original)). Therefore, Ms. Maxwell may be released on the condition that she pay for private armed security. (Dkt. 18 at 20 n.16.)

New Information for the Court's Consideration

The defense has devoted substantial time and effort to compile information that was not available to Ms. Maxwell at the time of the initial bail hearing that squarely addresses each of the factors the Court considered at that hearing. Because of these efforts, Ms. Maxwell can now present the following additional information in support of her renewed bail application:

- **Letter from Ms. Maxwell's spouse**. This letter demonstrates that Ms. Maxwell has powerful family ties to the United States that she will not abandon. It describes the committed relationship between Ms. Maxwell and her spouse, who is a U.S citizen, and how they lived a quiet family life together [redacted] in the United States for over four years immediately prior to her arrest. The letter further explains that Ms. Maxwell was forced to leave her family and drop out of the public eye, not because she was trying to evade law enforcement, but because the intense media frenzy and threats following the arrest and death of Jeffrey Epstein threatened the safety and wellbeing of herself and her family, [redacted] For these same reasons, Ms. Maxwell's spouse did not come forward as a co-signer at the time of the initial hearing. (Ex. A).

- **Letters from numerous other friends and family members**. These letters from Ms. Maxwell's other sureties and several family members and friends attest to Ms. Maxwell's strong, forthright character and their confidence that she will not flee. The sureties also describe the significant financial distress they would suffer if Ms. Maxwell were to violate her bail conditions. (Exs. B-N, W-X).

- **Financial report**. The financial report, prepared by the accounting firm Macalvins Limited, provides an accounting of Ms. Maxwell's financial condition from 2015-2020, and discloses (i) all of her own assets, (ii) all assets held in trust, and (iii) all of the assets held by her spouse over that same time period. The report reflects that the total value of assets in all three categories is approximately $22.5 million, which is the amount of the proposed bond. (Ex. O).

- **Report from former IRS agent**. [redacted] a former IRS agent with over 40 years of experience in criminal tax and financial fraud investigations, reviewed the Macalvins report and confirmed that it presents a complete and accurate picture of Ms. Maxwell and her spouse's assets from 2015-2020. (Ex. P).

- **Statement from the person in charge of Ms. Maxwell's security**. This statement rebuts the government's claim that she attempted to hide from law enforcement at the time of her arrest. (Ex. S).

- **Extradition waivers and expert affidavits**. To address the Court's concerns about extradition, Ms. Maxwell will present irrevocable written waivers of her right to

contest extradition in both the United Kingdom and France.[2] We also provide opinions from experts in the extradition laws of the France and the United Kingdom stating that it is highly unlikely that Ms. Maxwell would be able to resist extradition from either country in the event she were granted bail and somehow fled to either country, which she has no intention of doing. Their opinions also state that any extradition proceeding would be resolved promptly. (Exs. T-V).

- **Lack of corroborating evidence**. The government represented to the Court that it had "contemporaneous documents," including "diary entries" in support of its case. (Dkt. 4 at 5). The defense has now reviewed the discovery produced to date, including all of the documents that the government described as the core of its case against Ms. Maxwell. As explained more fully below, the discovery contains no meaningful documentary corroboration as to Maxwell and only a small number of documents from the time period of the conspiracy charged in the indictment. As an example, the government produced only [redacted].[3] The evidence in this case boils down to witness testimony about events that took place over 25 years ago. Far from creating a flight risk, the lack of corroboration only reinforces Ms. Maxwell's conviction that she has been falsely accused and strengthens her long-standing desire to face the allegations against her and clear her name in court.

- **Oppressive conditions of confinement.** Ms. Maxwell has now been detained for over 150 days in the equivalent of solitary confinement since she was indicted and arrested on July 2, 2020, despite the fact that she is not a suicide risk and has not received a single disciplinary infraction. The draconian conditions to which Ms. Maxwell is subjected are not only unjust and punitive, but also impair her ability to review the voluminous discovery produced by the government and to participate meaningfully in the preparation of her defense. Furthermore, the recent COVID-19 outbreak at the MDC threatens her safety and well-being.

Ms. Maxwell Should Be Placed on Restrictive Bail Conditions

During her more than five months in isolation, Ms. Maxwell has had to watch as she has been relentlessly attacked in a deluge of media articles that spiked over a year ago when Epstein

[2] Ms. Maxwell has not yet signed these waivers because we have not been able to visit her in the MDC to obtain her signature since she was quarantined over two weeks ago. She will sign them as soon as legal visits resume.

[3] In a letter dated October 13, 2020, we asked the government to provide additional discovery including, among other things, [redacted] In light of the serious *Brady* infractions in recent cases before this Court, and the recent order filed in this case pursuant to Rule 5(F) of the Federal Rules of Criminal Procedure (*see* Dkt. 68), the government's failure to obtain [redacted] is curious and concerning.

was arrested and has shown no signs of abating. Indeed, in the three months after her arrest, Ms. Maxwell was the subject of over 6,500 national media articles. That exceeds the number of articles that mentioned such high-profile defendants as Harvey Weinstein, Bill Cosby, Joaquín "El Chapo" Guzmán Loera, and Keith Raniere in the 90-day period following their arrests, *combined*. The media coverage has ruthlessly vilified her and prejudged her guilt, and has exposed her family and friends to harassment, physical threats, and other negative consequences.

But Ms. Maxwell is not the person the media has portrayed her to be; far from it. And her response to these unfounded allegations remains unchanged: she resolutely and vehemently denies them, and she is steadfastly committed to remaining in this country, where she has been since Epstein's arrest in July 2019, to fight them in court. For Ms. Maxwell to flee, she would have to abandon her spouse [redacted]. She will not risk destroying the lives and financial well-being of those she holds most dear to live as a fugitive during a worldwide pandemic. In fact, every action Ms. Maxwell has taken from the time of Epstein's arrest up to the time of the first bail hearing was designed to *protect* her spouse [redacted] from harassment, economic harm, and physical danger. Ms. Maxwell wants to stay in New York and have her day in court so that she can clear her name and return to her family.

Justice is not reserved solely for the victims of a crime; it is for the accused as well. Here, justice would be served by granting Ms. Maxwell bail under the comprehensive conditions we propose. The alternative is continued detention under oppressive conditions that are unprecedented for a non-violent pretrial detainee, which significantly impair her ability to participate in her defense and prepare for trial and which jeopardize her physical health and psychological wellbeing.

ARGUMENT

I. Reconsideration of the Court's Bail Decision is Appropriate Under 18 U.S.C. § 3142(f)

A prior determination that a defendant should not be released on bail does not preclude the Court from reconsidering its decision in light of new information. To the contrary, a bail hearing

> may be reopened . . . at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

18 U.S.C. § 3142(f).

Courts have relied on § 3142(f) in revisiting bail determinations where the defendant presents material testimony or documentary evidence that was not available to her at the time of the initial hearing, even if the underlying facts might have been within the defendant's knowledge. For example, in *United States v. Ward,* 63 F. Supp. 2d 1203 (C.D. Cal. 1999), the court granted the defendant's request to reopen his bail hearing to present evidence of his immediate family's willingness to act as sureties for his release. *Id.* at 1207. The court held that although "his immediate family and relatives were obviously known to" the defendant at the time of his arrest, his inability to contact them and secure their appearance at his initial bail hearing justified reconsideration. *Id.*

Courts also have found § 3142(f) satisfied where there is new information regarding the defendant's guilt or innocence or the nature and seriousness of the alleged offense—facts generally not known to a criminal defendant at the time of the initial hearing—particularly where the evidence undermines the government's prior representations to the Court regarding the strength of its case. *See, e.g., United States v. Stephens,* 447 F. Supp. 3d 63, 65 (S.D.N.Y. 2020)

(Nathan, J.) (reconsidering bail decision based, in part, on evidence suggesting government's case weaker than alleged at initial hearing and concern about possible outbreak of COVID-19 in BOP facilities); *United States v. Lee,* No. CR-99-1417 JP, 2000 WL 36739632, at *3 (D.N.M. 2000) (reopening hearing to consider, *inter alia,* affidavits relating to seriousness of the offense that defendant "could have not have martialed" in the 17 days between his indictment and the original hearing). Changed circumstances also have been found to satisfy § 3142(f) even when the change was within the defendant's control. *See United States v. Bradshaw,* No. 00-40033-04-DES, 2000 WL 1371517 (D. Kan. July 20, 2000) (reopening hearing where defendant decided to seek substance abuse treatment following initial hearing).

In addition, the Court may exercise its inherent authority to reconsider its own decision. "[A] release order may be reconsidered even where the evidence proffered on reconsideration was known to the movant at the time of the original hearing." *United States v. Rowe,* No. 02 CR. 756 LMM, 2003 WL 21196846, at *1 (S.D.N.Y. May 21, 2003); *see also United States v. Petrov,* No. 15-CR-66-LTS, 2015 WL 11022886, at *3 (S.D.N.Y. Mar. 26, 2015) (noting "Court's inherent authority for reconsideration of the Court's previous bail decision").

Here, Ms. Maxwell has obtained substantial information and evidence that was not available to her at the time of her initial detention hearing. Ms. Maxwell and her counsel have also received and reviewed the voluminous discovery produced by the government (over 2.7 million pages), which was not available at the initial hearing and which raises serious questions about the strength of the government's case. As a result, Ms. Maxwell can now present for the Court's consideration the additional evidence discussed above in support of her bail application.

It cannot be reasonably disputed that this new evidence meets the other requirement of § 3142(f): that it have a "material bearing on the issue whether there are conditions of release

that will reasonably assure the appearance of such person as required and the safety of any other person and the community." The evidence submitted herewith relates directly to factors on which the Court relied in its initial detention order. Among the bases for the Court's initial order denying bail were its findings that:

- Ms. Maxwell's lack of "significant family ties" in the United States suggested "that flight would not pose an insurmountable burden for her" (Tr. 84);
- the Court lacked "a clear picture of Ms. Maxwell's finances and the resources available to her" that would allow it to set reasonable bail conditions (Tr. 87);
- "[c]ircumstances of her arrest . . . may cast some doubt on the claim that she was not hiding from the government" (Tr. 85);
- Ms. Maxwell "is a citizen of France, a nation that does not appear to extradite its citizens" (Tr. 83); and
- the government had proffered that its "witness testimony will be corroborated by significant contemporaneous documentary evidence" (Tr. 82).

The additional evidence submitted herewith demonstrates that Ms. Maxwell does have significant family ties in the United States; that her assets have been thoroughly disclosed and reasonable bail conditions can be set; that Ms. Maxwell has never attempted to hide from the government; that Ms. Maxwell has waived her extradition rights and it is highly likely she would be extradited from the United Kingdom or France; and that the government's case against her is not supported by the corroborating documentary evidence which the government represented at the initial hearing.

The evidence submitted herewith is significant and substantial, and it could not have reasonably been obtained, assembled, and submitted in the 12 days between Ms. Maxwell's arrest and her initial detention hearing. This evidence has a material bearing on whether reasonable bail conditions can be set, and it shows that the proposed set of conditions will reasonably assure Ms. Maxwell's appearance in court.

II. Ms. Maxwell Should Be Granted Bail Under the Proposed Strict Bail Conditions

A. Ms. Maxwell Has Deep Family Ties to the United States and Numerous Sureties to Support Her Bond

Attached to this submission are letters from Ms. Maxwell's spouse and from numerous close family members and friends, many of whom have agreed to serve as sureties to support Ms. Maxwell's renewed bail application. (*See* Exs. A-N, W-X). Far from the cruel caricature that the press has so recklessly depicted since the arrest of Jeffrey Epstein, these letters demonstrate that Ms. Maxwell is generous, loving, and devoted to her family and friends, and that her life is firmly rooted in this country with her spouse [redacted]. The signatories of these letters have known Ms. Maxwell for decades, and some for her entire life. All know her to be the antithesis of what the government has alleged. They trust her completely, including with their minor children.

These people have stepped forward to support Ms. Maxwell, despite the considerable risk that, if their names ever become public, they will be subjected to some of the same relentless and harassing media intrusion and personal threats that Ms. Maxwell has experienced for years. As a sign of their confidence that Ms. Maxwell will remain in this country, the sureties have agreed to sign their own bonds and to post meaningful pledges of cash or property in amounts that would cause them significant financial distress if Ms. Maxwell were to violate her bail conditions.

These letters directly address the concern the Court expressed at the last bail hearing that Ms. Maxwell did not have "any dependents [or] significant family ties" to the United States. (Tr. 84). If Ms. Maxwell were to flee, she would be leaving behind the family that has been the center of her life [redacted], she would be abandoning her spouse [redacted]

[redacted] who are already suffering without her presence, and she would cause financial ruin to herself and her closest family and friends.

1. Ms. Maxwell is Devoted to Her Spouse [redacted] and Would Never Destroy Her Family By Leaving the Country

The letter submitted by Ms. Maxwell's spouse powerfully demonstrates that Ms. Maxwell has deep roots in the United States and is not a flight risk. The letter describes Ms. Maxwell's domestic life with her spouse [redacted] in the four years prior to her arrest. Her spouse describes Ms. Maxwell as a "wonderful and loving person," who [redacted] does not remotely resemble the person depicted in the indictment. (Ex. A ¶ 4). Contrary to the government's assertion that Ms. Maxwell lived a rootless, "transient" lifestyle (Dkt. 4 at 9), Ms. Maxwell lived a quiet family life with her spouse [redacted] until Epstein's arrest in July 2019 ignited a media frenzy that has ripped the family apart.

> The person described in the criminal charges is not the person we know. I have never witnessed anything close to inappropriate with Ghislaine; quite to the contrary, the Ghislaine I know is a wonderful and loving person. [redacted]
>
> Until the explosion of media interest that followed the arrest and subsequent death in custody of Jeffrey Epstein in July thru August 2019, [redacted]

(*Id.* ¶¶ 4-5).

The letters from Ms. Maxwell's family members similarly describe how Ms. Maxwell's home is in the United States with her spouse [redacted] and how deeply committed she is to her family. *See* Ex. D [redacted]

[redacted] It is very obvious that they love her deeply. They are an incredibly strong and close family unit."); Ex. F ("I [redacted] joined a large family event hosted by Ghislaine and her husband in which she was very hospitable and obviously very much at home and in love."); Ex. C ("[Ghislaine] has called the United States her home for almost 30 years. She has deep affective family ties here in this country [redacted] Most of all, her own husband [redacted] are here."); Ex. B ("I wish … to attest to the loving relationship she has with her husband [redacted] which I have personally witnessed on many different occasions.") .

Indeed, it was because of Ms. Maxwell's devotion to her family, and her desire to protect her spouse [redacted] from harassment and threats, that she went forward at the first bail hearing without relying on her spouse as a co-signer, even though she knew his support would greatly strengthen her bail application. As her spouse writes:

> I did not initially come forward as a co-signer of her first bail application … [because we were] trying to protect [redacted] from ferocious media aggression…. [redacted]

(Ex. A ¶ 13). Her spouse is coming forward now because he is deeply concerned about how she is being treated in the MDC and because the terrible consequences that he and Ms. Maxwell were trying to prevent have already occurred. [redacted] (*Id.* ¶¶ 10-11).

Ms. Maxwell's spouse fully supports her and is prepared to put up all of his and Ms. Maxwell's assets to ensure that Ms. Maxwell abides by the strict conditions proposed. He

has agreed to co-sign Ms. Maxwell's $22.5 million bond and to post all three properties he owns—all located in the United States and worth a total of approximately $8 million combined as security for the bond. As the financial report discussed later in this submission makes clear, $22.5 million represents all of the current assets of Ms. Maxwell and her spouse. One of the properties is the family home where Ms. Maxwell, her spouse, [redacted] have lived together [redacted]. If Ms. Maxwell were to violate her bail conditions, which she has no intention of doing, she would be leaving her spouse [redacted] with virtually nothing. It is unfathomable that Ms. Maxwell would abandon her family, which she has fought so hard to protect, under these circumstances.

2. A Number of Ms. Maxwell's Family and Friends, and the Security Company Protecting Her, Are Prepared to Sign Significant Bonds

In addition to her spouse, a number of Ms. Maxwell's family members and friends, many of whom are U.S. citizens and residents, have volunteered to step forward as co-signers. These sureties, as well as the others who have written letters on Ms. Maxwell's behalf, know that Ms. Maxwell has never run from a difficult situation and will not do so now. To show the depth of their support and their confidence that Ms. Maxwell will abide by her bail conditions and remain in this country, the sureties have agreed to sign separate bonds for Ms. Maxwell in amounts that are significant and meaningful to them, and each would cause severe financial hardship if she were to violate her bail conditions.

For example, one surety, who is a U.S. citizen and resident, will post the only property she owns. This property is worth approximately $1.5 million and is her "only nest-egg for retirement." (Ex. C). She writes:

> I do not have any other savings and it would be completely devastating financially and in every way to my own family were the house to be taken over by the Government due to a breach of [redacted] bail conditions.

(*Id.*). Nevertheless, she has "no hesitation" posting her home because she knows "in every fibre of [her] being" that Ms. Maxwell "will never try to flee." (*Id.*).

Similarly, another surety who has agreed to sign a $3.5 million bond writes:

> This amount represents the value of effectively all of my assets, including my home [redacted] If I lost these assets because Ghislaine violated the conditions of her release, I would be financially ruined. I make this pledge without reservation because I know that Ghislaine will remain in the United States to face the charges against her.

(Ex. F). Two other sureties, one of whom is a U.S. citizen and resident, will post cash bonds in the amount of $25,000, and another will post $2,000 in cash, which are significant pledges for these individuals.

In addition to these bonds, the security company that will provide security services to Ms. Maxwell upon her transfer into home confinement has agreed to post a $1 million bond in support of her bail application. In our collective experience as defense counsel, we are not aware of a previous example where a security company has posted a bond for a defendant. The head of the security company has confirmed that they have never done this for a defendant in the past but are willing to do so here because of his company's "long-standing relationship with Ms. Maxwell" and because he is "confident that she will not try to flee." (Ex. S).

In sum, these bonds reflect the depth of support that Ms. Maxwell has from her family and friends, who are risking their livelihoods, their safety, and their ability to live without constant media harassment to support her. (*See* Ex. B) ("Absolutely anyone who dares to put their head above the parapet so to speak, to … support Ghislaine personally, gets it shot off immediately amid a hail of social vilification and malignancy and reputational slaughtering."). Ms. Maxwell would never destroy those closest to her by fleeing, after they have risked so much to support her.

B. Ms. Maxwell Has Provided a Thorough Review of Her Finances for the Past Five Years

The government raised concerns at the initial bail hearing about the accuracy and completeness of the financial disclosures that Ms. Maxwell provided to Pretrial Services. (Dkt. 22 at 11-12; Tr. 28-29, 34-35). The Court stated that it did not have "a clear picture of Ms. Maxwell's finances and the resources available to her" and therefore had no way "to set financial bail conditions that could reasonably assure her appearance in court." (Tr. 86-87).

To address the Court's questions about Ms. Maxwell's finances, defense counsel retained Macalvins, a highly reputable accounting firm in the United Kingdom, to conduct an analysis of Ms. Maxwell's assets and finances for the past five years. The Macalvins accountants reviewed thousands of pages of financial documents, including bank statements, tax returns, FBAR filings, and other materials to create a clear picture of the assets held by Ms. Maxwell and her spouse, as well as any assets held in trust for the benefit of Ms. Maxwell, and the source of those assets from 2015-2020. This analysis, which is based in substantial part on documents that the government provided in discovery, has involved a significant amount of work and has taken substantial time to complete. It was not possible to perform this analysis in the brief time between Ms. Maxwell's arrest and the initial bail hearing, especially with Ms. Maxwell detained following her arrest.

The Macalvins report was also reviewed by [redacted], a Certified Fraud Examiner and a former IRS Special Agent with over 40 years of experience in complex financial fraud investigations. As a Special Agent, [redacted] investigated numerous financial fraud and criminal tax cases, including several in this District. [redacted] reviewed the Macalvins report and the underlying documents and determined that it presents a complete and accurate summary of the assets held by Ms. Maxwell and her spouse, as well as assets that were, or are currently, held in

trust for the benefit of Ms. Maxwell, from 2015-2020. The Macalvins report and [redacted]'s report are attached as Exhibits O and P.[4]

As set forth in the Macalvins report, Ms. Maxwell's net worth at the beginning of 2015 was approximately $20,200,000. (Ex. O ¶ 11). The 2015 tax return records the sale of a residential property in New York City for $15,075,000. The address of this property is [redacted]. The proceeds of the sale were deposited at [redacted] (*Id.* ¶ 12). The sale of Ms. Maxwell's New York apartment coincided with her intention [redacted] to live with her spouse [redacted] (*See* Ex. A ¶ 2).

Ms. Maxwell married her spouse in 2016 and commenced filing joint U.S. tax returns from the 2016 tax year until today. (Ex. O ¶ 13). In 2016, Ms. Maxwell transferred the majority of her assets into a trust controlled by her spouse and [redacted]. (*Id.*). All assets in the trust were distributed to Ms. Maxwell's spouse in 2019. (*Id.* at 9). Ms. Maxwell and her spouse's net worth as of October 31, 2020 was approximately $22,500,000. (*Id.* ¶ 15).[5]

There has been no alienation of any assets and no significant sum of cash has been transferred outside of the control of Ms. Maxwell or her spouse in the period from 2015-

[4] We have not provided the Court with the appendices to the Macalvins report because they are voluminous. If the Court would like copies of the appendices, we are happy to provide them.

[5] At her Pretrial Services interview, Ms. Maxwell reported that she believed she had approximately $3.8 million in assets, which included her London residence worth approximately $3 million, and approximately $800,000 in bank accounts. Ms. Maxwell was detained at the time and had no access to her financial records and was trying to piece together these numbers from memory. According to the Macalvins report, these figures are a close approximation of the value of the assets that Ms. Maxwell held in her own name at the time of her arrest. (*Id.* at 9). For the reasons already discussed, Ms. Maxwell was reluctant to discuss anything about her husband and expressed that to Pretrial Services.

2020, other than daily living expenditures for her family and for professional services in the defense of Ms. Maxwell from the charges she faces. (*Id.* ¶ 16).

The Macalvins report confirms that Ms. Maxwell disclosed all of her foreign bank accounts in FBAR filings and properly disclosed her bank accounts, investments and other assets in her U.S. tax filings at all times. (*Id.* ¶¶ 25, 30). The report also explains that the transfers of funds between various accounts in the past few years, which the government highlighted in their initial bail submission (Dkt. 22 at 11-12), reflected movements between banks triggered by the closure of one banking relationship and the opening of new relationship, as well movements of cash maturing on deposit and other financial investments. (*Id.* ¶ 18).

At the last bail hearing, the government suggested that Ms. Maxwell's finances were "opaque" and that she potentially had "significant [] undetermined and undisclosed wealth." (Tr. 27; Dkt. 22 at 11-12). The Macalvins report lifts this cloud of unjustified intrigue and provides a straightforward answer: Ms. Maxwell and her spouse currently have assets worth approximately $22.5 million.[6] Accordingly, the proposed bond amount of $22.5 million represents all of the couple's current assets.

The report further shows that Ms. Maxwell has no undisclosed wealth and is not hiding assets overseas. To the contrary, for the past several years, Ms. Maxwell and her husband have *disclosed* their foreign assets by submitting FBAR filings regarding their

[6] We have redacted the name of the bank where [redacted] Although the balance of the account is fully disclosed in the Macalvins report, we felt it necessary to redact the name of the bank because [redacted] We will, of course, follow the Court's guidance on how to proceed and provide the name of the bank to the Court and the government, if required. In that event, we ask that the Court establish guidelines limiting what the government can do with the information.

foreign bank accounts. Ms. Maxwell is not trying to hide anything from the government. She has been entirely transparent with her finances and has filed accurate and timely joint tax returns with her spouse for the last four years, and she has put it all at risk of forfeiture if she flees under the proposed bail package. The Macalvins report and the report of [redacted] give the Court a clear picture of Ms. Maxwell's finances. Accordingly, the Court should have no pause about granting her on bail on the proposed terms.

C. Ms. Maxwell Was Not Hiding from the Government Before Her Arrest

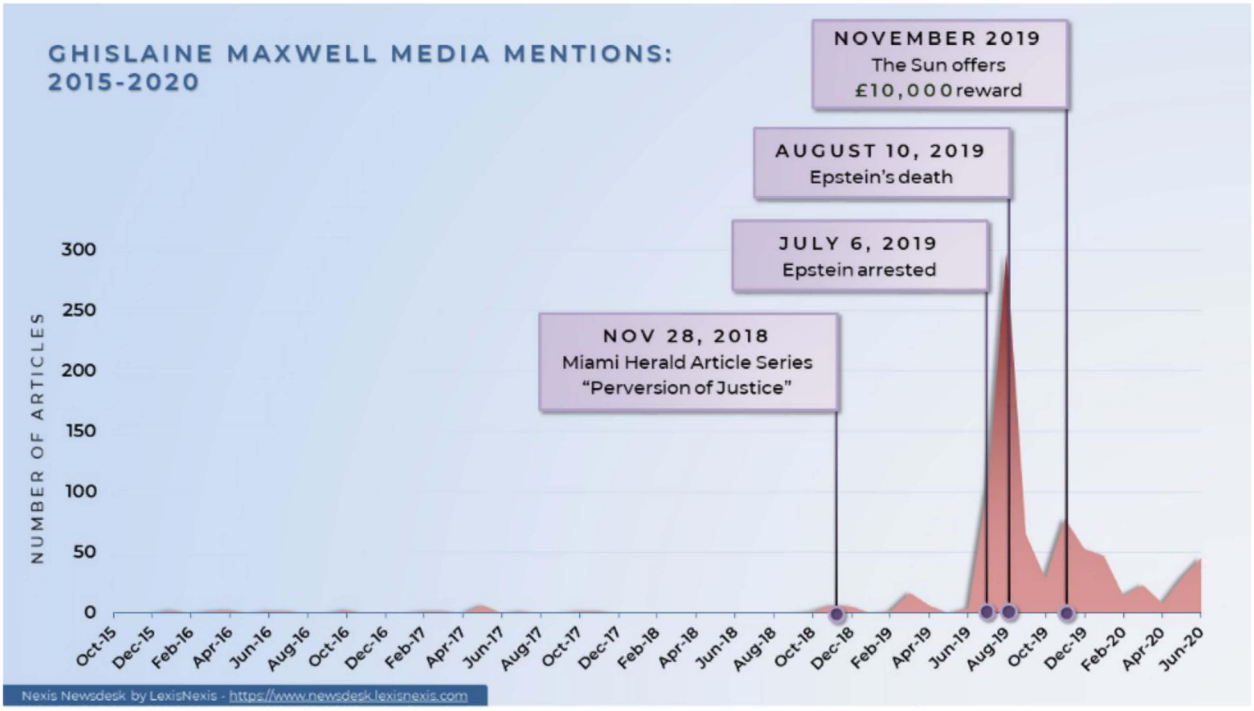
1. Ms. Maxwell Was Trying to Protect Herself [redacted] from a Media Frenzy and from Physical Threats

The letter from Ms. Maxwell's spouse also forcefully debunks the fiction that Ms. Maxwell was trying to conceal her whereabouts from the government before her arrest, as the government argued at the first bail hearing. (Tr. 25). Ms. Maxwell made efforts to remove herself from the public eye solely to prevent the intrusion of the frenzied press into her personal family life and to protect herself, her spouse, [redacted] from third parties who threatened violence. To suggest that she was a fugitive is patently wrong.

After Epstein's arrest and subsequent death in BOP custody, the media coverage of Ms. Maxwell spiked dramatically, as the press rushed to substitute Ms. Maxwell for Epstein as the target of the scandal. The graph below illustrates the volume of press articles relating to Ms. Maxwell over the course of the last five years.[7] The graph shows that Ms. Maxwell was mentioned in news articles only sporadically between October 2015 and June 2019. It was not until Mr. Epstein's arrest in July 2019 that Ms. Maxwell was thrown into the media spotlight. For example, Ms. Maxwell was mentioned in only 59 articles in total from October 2015 to June 2019. Immediately following Epstein's arrest, however, she was

[7] In order to quantify the number of articles published about Ms. Maxwell, we used Nexis NewsDesk, a media monitoring and analytics service provided by LexisNexis.

named in 97 articles in the month of July 2019 alone. The level of press coverage spiked again in November 2019 when the British tabloid *The Sun* ran an advertisement offering a £10,000 bounty for information about Ms. Maxwell's whereabouts and it continued at a heightened level over the next several months.



This graph depicts in stark visual terms the sea change in media attention that upended Ms. Maxwell's life at the time of Epstein's arrest. But it was not only harassment from the press that Ms. Maxwell suddenly encountered at this time. She also faced a deluge of threatening messages on social media in the days immediately following Epstein's arrest and death. (*See* Ex. Q). The hatred directed towards Ms. Maxwell in these posts is palpable and unsettling. Despite the fact that Ms. Maxwell was not charged—indeed, not even mentioned—in the Epstein indictment, and had not been charged with any crimes, the authors referred to her as a "crazy, pedophile, pimp, bitch" and a "subhuman c*nt," and called for her to "rot in jail." These people also encouraged all manner of violent acts

against Ms. Maxwell. For example, one post stated "they need to get this bitch n string her up by her neck . . . f*ckin monster." Another stated:

> I hope someone finds her and kills her. That would be justice. Obviously her lawyers know's [sic] where she is, someone should stick them up to batteries until we find out where she is.

These posts were particularly chilling because some of them suggested that the authors [redacted] might [redacted] carry out the violent acts they had been threatening. For example, in response to an August 14, 2019 news report that Ms. Maxwell might be living in Massachusetts, one person wrote:

> SHE'S HERE in #Massachusetts ?! The bitch #GhislaineMaxwell who #SexTrafficked young girls for #Epstein ?!?! Why the hell isn't she being brought in for questioning @ManchesterMAPD ?! WE DO NOT WANT HER HERE! #SleezyLeach She is CLOSE ENOUGH to me, I could grab her myself!

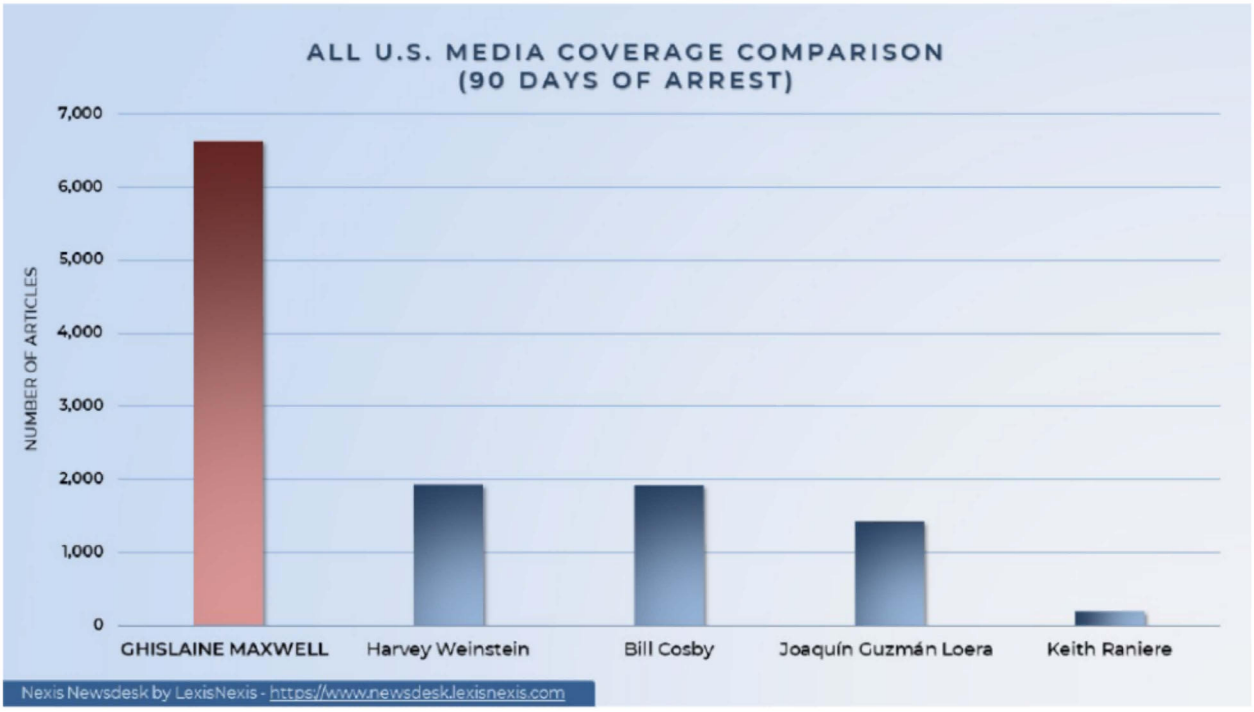
The intense media attention and violent threats made it no longer possible for Ms. Maxwell [redacted] to live a quiet life and required Ms. Maxwell to take more drastic steps to protect herself [redacted]. Rather than see [redacted] harmed by even more unwanted media attention, Ms. Maxwell made the difficult decision to separate herself [redacted] and leave her home. As her spouse writes:

> The "reporting" of Ghislaine over the past year has exploded exponentially. From the time of Epstein's arrest and death in custody in the summer of 2019 until Ghislaine's own arrest in July of this year, huge and increasingly frightening levels of media interest meant [redacted] There are many examples of violence whose seeds were born in conspiracy theories, and the experiences of QAnon, Pizzagate, and the recent Judge Salas attack are terrifying….
>
> It is hard to communicate in words the feeling of being stalked, spied upon and trapped by constant, 24/7 media intrusion [redacted]

[redacted]

(Ex. A ¶¶ 8-10). Ms. Maxwell had no choice but to separate herself [redacted] (*Id.* ¶ 11).

Since Ms. Maxwell's own arrest in July 2020, the press attention has exploded. It significantly dwarfs the media attention given to other recent high-profile defendants such as Harvey Weinstein, Bill Cosby, Joaquín "El Chapo" Guzmán Loera, and Keith Raniere. As reflected in the graph below, in the 90-day period immediately following her arrest, Ms. Maxwell was mentioned in more national media articles than in the analogous 90-day periods for Mr. Weinstein, Mr. Cosby, Mr. Guzmán Loera, and Mr. Raniere combined.



2. Ms. Maxwell's Counsel Was in Regular Contact with the Government Prior to Her Arrest

At no time, however, did Ms. Maxwell intend to flee or hide from the government, as the government argued at the last bail hearing. In fact, her intent was exactly the opposite. As her spouse's letter makes clear, after spending a few months away [redacted], Ms. Maxwell moved [redacted] so that she could [redacted] be within driving distance of the prosecutors in New York in case they wished to speak to her. (Ex. A ¶ 12) ("[Ghislaine] was adamant to not only stay in the United States to fight the smears against her, but to be within driving distance of New York."). Contrary to the impression given by the government, Ms. Maxwell was not "changing locations on multiple occasions" as if she were a fugitive from justice. (Tr. 87). After Ms. Maxwell moved into the house in New Hampshire in December 2019, she remained there continuously for approximately seven months until her arrest. (*See* Ex. B) ("[S]he was finally able to locate a place where she could not be moving around constantly and collect herself to fight for her life and to clear her name.").

Ms. Maxwell, through her counsel, was also in regular contact with the government from the moment of Epstein's arrest up the time of her own arrest, as would be customary in such situations. Defense counsel corresponded by email, spoke on the phone, or had in-person meetings with government in July, August, September, and October 2019, and also in January and March 2020. The timeline attached to this submission illustrates the extent of these contacts. (Ex. R). Defense counsel also requested an opportunity to be heard in the event that the government was considering any charging decisions against Ms. Maxwell. We were never given that opportunity, which is uncharacteristic for the Southern District of New York, nor were we given any notice of her impending arrest.

The government argued to the Court that defense counsel's contact with the prosecutors in the months leading up to Ms. Maxwell's arrest prove little about her intent to stay in this country simply because she never disclosed her location. (Tr. 26). While Ms. Maxwell was understandably not in the habit of volunteering her whereabouts given the intensity of the press attention, her counsel would have provided that information had the government asked for it. The government never did.

3. Ms. Maxwell Did Not Try to Avoid Arrest, Nor Was She "Good At" Hiding

Similarly, had the government reached out to defense counsel before Ms. Maxwell's arrest, we would have willingly arranged for her self-surrender. We were never given that chance. Instead, the government arrested her in a totally unnecessary early morning raid with multiple federal agents at her residence in New Hampshire, on the eve of the one-year anniversary of the arrest of Jeffrey Epstein, creating the misimpression that Ms. Maxwell was hiding from them. That is simply not the case.

The government argued that the events of Ms. Maxwell's arrest—in particular, that she moved herself into an interior room when the officers approached the house and that they found a cell phone wrapped in tin foil—evidence an attempt to evade law enforcement. (Tr. 32-34). As we previously explained to the Court, Ms. Maxwell was protecting herself from the press, not trying to avoid arrest. (Tr. 54-57).

Since the hearing, we have obtained the accompanying statement from [redacted] the head of the security company guarding Ms. Maxwell at the time of her arrest, which was not available at the time of the initial hearing. (Ex. S). [redacted] statement demonstrates that Ms. Maxwell was not avoiding arrest, but was following an agreed-upon procedure to protect herself in the event of a potential threat to her safety or security.

According to [redacted], the security guard on duty that day had seen helicopters flying over the house, which he assumed to be the press. (*Id.*). When the guard saw the FBI agents walking up the driveway to the house, he again assumed that they were members of the press. (*Id.*). Accordingly, he radioed Ms. Maxwell to alert her that the press was on the grounds and approaching the house. (*Id.*). In accordance with the procedure that Ms. Maxwell's security personnel had put in place for such an event, Ms. Maxwell moved away from the windows and into a safe room inside the house. (*Id.*). Ms. Maxwell was not trying to avoid arrest; she was simply following the established security protocols to protect herself from what had been informed was an ambush by the press.

Regarding the cellphone wrapped in tin foil, we explained to the Court at the initial bail hearing that Ms. Maxwell took this step to prevent the press from accessing her phone after the Second Circuit inadvertently unsealed certain court records with the phone number unredacted. (Tr. 55-56). Having now reviewed the discovery produced by the government, it is clear that Ms. Maxwell was not at all the "master spy" the government makes her out to be and was not wrapping the phone in order to evade detection by law enforcement.

First, the cellphone in question was subscribed in the name of "Terramar Project, Inc.," which is easily identifiable through a simple Google search as Ms. Maxwell's charity. Second, Ms. Maxwell used the phone to make calls as late as May 2020, just before her arrest. She would never have used the phone if she had been concerned that the authorities were using it to track her. Third, Ms. Maxwell had another phone subscribed in the name of "G Max" that she was using as her primary phone, which was not covered. It would make no sense for her to try to wrap one phone in tin foil to avoid detection and not the other.

Indeed, the discovery reflects that it was not hard at all for the government to locate Ms. Maxwell when they wanted to find her by tracking her primary phone.

In sum, the cellphone clearly shows that Ms. Maxwell was not "good at" hiding or that she was avoiding arrest, as the government claimed. (Tr. 31-32). She was trying to protect herself as best as she could from harassment by the press, not capture by law enforcement. Moreover, this should not be a bar to granting bail. The proposed conditions ensure her presence at home in plain sight of [redacted] (and the security guards), GPS-monitored, and under strict Pretrial supervision.

D. Ms. Maxwell Has Waived Her Extradition Rights and Could Not Seek Refuge in the United Kingdom or France

At the initial hearing, the government argued that Ms. Maxwell, a naturalized U.S. citizen who has lived in the United States for almost 30 years, might flee to the United Kingdom or France if granted bail, despite the fact that she did not leave the country for nearly a year after Epstein's arrest. (Dkt. 22 at 6.) The government asserted in its reply brief that France "does not extradite its citizens to the United States pursuant to French law." (*Id.*) At the bail hearing, the government represented that "France will not extradite a French citizen to the United States as a matter of law, even if the defendant is a dual citizen of the United States," and that extradition by the United Kingdom would be "lengthy" and "uncertain" with bail "very likely" pending the extradition proceeding. (Tr. 27.) These assertions are incorrect, particularly given Ms. Maxwell's irrevocable waiver of her extradition rights with respect to both the United Kingdom and France.

As we noted for the Court at the initial hearing, the concern that Ms. Maxwell would attempt to flee the United States is entirely unfounded given that Ms. Maxwell had every motive and opportunity to flee after the arrest and death of Jeffrey Epstein, but chose to remain in this

country. (Dkt. 18 at 12-14, Tr. 52-53). It is even more unfounded in light of the daily avalanche of media coverage of Ms. Maxwell. She is now one of the most recognizable and infamous people in the world. She is being pursued relentlessly by the press, which would no doubt be camped out by her front door every day if she were granted bail. The notion that Ms. Maxwell could somehow flee to a foreign country during a worldwide pandemic (presumably, by plane), while being supervised and monitored 24 hours a day and with the eyes of the global press corps on her every minute, without being caught, is absurd.

To the extent the Court is concerned that her calculus may have changed since her arrest because the threat of prosecution has now crystallized into concrete charges (Tr. 85-86), Ms. Maxwell has addressed that concern head-on—she will execute irrevocable waivers of her right to contest extradition in both the United Kingdom and France. (Ex. T). These waivers demonstrate Ms. Maxwell's firm commitment to remain in this country to face the charges against her. Moreover, as discussed more fully in the attached expert reports, because of these waivers and other factors, it is highly unlikely that Ms. Maxwell would be able to successfully resist an extradition request from the United States to either country, in the extremely unlikely event she were to violate her bail conditions. (Exs. U-V). Moreover, any extradition proceedings in either country would be resolved promptly. (*Id.*).

Courts have addressed concerns about a defendant's ties to a foreign state that enforces extradition waivers by requiring the defendant to execute such a waiver as a condition of release—including in cases where the defendants, unlike Ms. Maxwell, were not U.S. citizens. *See, e.g., United States v. Cirillo,* No. 99-1514, 1999 WL 1456536, at *2 (3d Cir. July 13, 1999) (vacating district court's detention order and reinstating magistrate's release order, which required foreign citizen and resident to sign an "irrevocable waiver of extradition" as a condition

of release); *United States v. Salvagno,* 314 F. Supp. 2d 115, 119 (N.D.N.Y. 2004) (ordering each of two defendants to "execute and file with the Clerk of the Court a waiver of extradition applicable to any nation or foreign territory in which he may be found as a condition of his continued release"); *United States v. Karni,* 298 F. Supp. 2d 129, 132-33 (D.D.C. 2004) (requiring Israeli citizen who lived in South Africa and had "no ties to the United States" to sign waiver of rights not to be extradited under Israeli and South African extradition treaties with United States); *United States v. Chen,* 820 F. Supp. 1205, 1212 (N.D. Cal. 1992) (ordering as a condition of release that defendants "execute waivers of challenges to extradition from any nation where they may be found"). Moreover, a defendant's waiver of the right to appeal an extradition order has been recognized as an indication of the defendant's intent not to flee. *See, e.g., United States v. Khashoggi,* 717 F. Supp. 1048, 1052 (S.D.N.Y. 1989) (Judge Keenan found defendant's extradition appeal waiver "manifests an intention to remain here and face the charges against him").

In response to the government's assertions, Ms. Maxwell has obtained the accompanying reports of experts in United Kingdom and French extradition law, who have analyzed the likelihood that Ms. Maxwell, in the event she were to flee to the United Kingdom or France, would be able to resist extradition to the United States after having executed a waiver of her right to do so. Both have concluded that it is highly unlikely that she would be able to resist extradition successfully.

United Kingdom. With respect to the United Kingdom, submitted herewith is a report from David Perry ("Perry Rep."), a U.K. barrister who is widely considered one of the United Kingdom's preeminent extradition practitioners. (Perry Rep. Annex B ¶ 2.1) (attached as Exhibit U). Mr. Perry has acted on behalf of many overseas governments in extradition proceedings; has

appeared in the High Court, House of Lords and Supreme Court in leading extradition cases; and has acted as an expert consultant to the Commonwealth Secretariat on international cooperation. (*Id.*). In 2011 and 2012, Mr. Perry was part of a select team appointed by the U.K. government to conduct a review of the United Kingdom's extradition arrangements, a review that formed the basis of changes to the 2003 Extradition Act. (*Id.* Annex B ¶ 3.1).

In Mr. Perry's opinion, it is "highly unlikely that Ghislaine Maxwell would be able successfully to resist extradition to the United States" in connection with this case. (Perry Rep. ¶ 2(e)). After concluding that none of the potentially applicable bars to extradition or human rights objections would prevent Ms. Maxwell's extradition, Mr. Perry explains that Ms. Maxwell's waiver of her extradition rights "would be admissible in any extradition proceedings and, in cases, such as this one, where the requested person consents to their extradition, the extradition process is likely to take between one and three months to complete." (*Id.* ¶¶ 24-39). Mr. Perry's report also undercuts the government's representation at the initial hearing regarding likelihood of bail (*see* Tr. 27), opining that "a person who absconded from [a] US criminal proceeding in breach of bail . . . is extremely unlikely to be granted bail" in a subsequent U.K. extradition proceeding. (Perry Rep. ¶ 23).

France. The accompanying report of William Julié ("Julié Rep.") reviews the French extradition process as it would likely be applied to Ms. Maxwell. Mr. Julié is an expert on French extradition law who has handled extradition cases both within and outside the European Union and regularly appears as an extradition expert in French courts. (Julié Rep.) (attached as Exhibit V). Mr. Julié explains that, contrary to the government's representation, "the extradition of a French national to the USA is legally permissible under French law." (*Id.* at 1).

Mr. Julié opines that the French entity with jurisdiction over the legality of extradition requests would not oppose Ms. Maxwell's extradition on the ground that she is a French citizen, and that it is "highly unlikely that the French government would refuse to issue and execute an extradition decree" against her. (*Id.* at 2). Mr. Julié bases his opinion largely on (i) Ms. Maxwell's U.S. citizenship; (ii) her irrevocable waiver of her extradition rights with respect to the United States; (iii) the fact that the issue would arise only if Ms. Maxwell had fled to France in violation of strict bail conditions in the United States; (iv) the fact that a failure to extradite would obligate French authorities to try Ms. Maxwell in French courts for the same 25-year-old conduct alleged in the indictment, which did not take place in France; and (v) France's diplomatic interest in accommodating an extradition request from the United States. (*Id.*). Mr. Julié adds that the extradition process would likely be "disposed of expediently"; where the requesting state emphasizes the urgent nature of the extradition request, "the extradition decree is generally issued in only a few weeks." (*Id.* at 2-3). And in any event, while the extradition proceedings are pending, "the French judicial authorities would most certainly decide that [Ms. Maxwell] has to remain in custody given her flight from the USA and the violation of her bail terms and conditions in this requesting State." (*Id.* at 12).

Ms. Maxwell has no intention of fleeing the country and has relinquished her rights to contest extradition. She has always maintained her innocence and will continue to fight the allegations against her here in the United States, as she has in the past. Even if she were to flee after being granted bail (which she will not), it is likely that Ms. Maxwell would be extradited expeditiously from France or the United Kingdom. Accordingly, the Court should give no weight in the bail analysis to the fact that Ms. Maxwell is a dual citizen of these countries.[8]

[8] Ms. Maxwell would also have very little incentive to flee to France. According to recent press reports, French authorities recently broadened their existing criminal investigation into Jeffrey Epstein to include Ms. Maxwell. *See*

E. The Discovery Contains No Meaningful Documentary Corroboration of the Government's Allegations Against Ms. Maxwell

At the initial bail hearing, the government represented to the Court that "the evidence in this case is strong" and that the allegations of the alleged victims were "backed up [by] contemporaneous documents . . . [including] flight records, diary entries, business records, and other evidence." (Dkt. 4 at 5.) The Court credited those representations and accepted the government's proffer that the witness testimony would be "corroborated by *significant* contemporaneous documentary evidence." (Tr. 82) (emphasis added). The defense, of course, could not rebut the government's representations at the hearing because the government had not yet produced discovery.

Since then, the government has produced, and the defense has reviewed, hundreds of thousands of pages of discovery, including the entire initial tranche of discovery that the government represented was the core of its case against Ms. Maxwell.[9] The discovery contains no meaningful documentary corroboration of the allegations whatsoever, much less "significant" corroboration that the Court was led to believe existed. The vast majority of the discovery that the defense has reviewed relates to the time period in the 2000s and the 2010s, well after the conspiracy charged in the indictment (1994-1997). These documents include [redacted] In fact, only

Daily Mail, "French prosecutors probing Jeffrey Epstein over rape and abuse of children in Paris widen probe to include Ghislaine Maxwell to see if British socialite was involved in his offending," (Oct. 25, 2020), https://www.dailymail.co.uk/news/article-8878825/French-prosecutors-probing-Jeffrey-Epstein-widen-probe-include-Ghislaine-Maxwell html.

[9] The defense has not yet completed its review of the over 1.2 million documents produced on November 9, 2020 and November 18, 2020. This production includes documents and images seized from electronic devices found at Epstein's residences in searches of his residences in 2019. Our initial review, however, shows that the documents are from the 2000s and 2010s, well after the charged conspiracy.

a very small fraction of the discovery pertains in any way to the individuals we believe to be the three complainants named in the indictment, and none of it corroborates any allegations of "grooming" or sexual assault or a conspiracy with Epstein involving Ms. Maxwell.

For example, the government represented to the Court that it had "diary entries" that corroborated the witness testimony, suggesting that more than one of the complainants had kept contemporaneous diaries that implicated Ms. Maxwell. (Dkt. 4 at 5). The discovery produced thus far contains only [redacted][10] [redacted]

In addition, the flight records that the government touted at the bail hearing, which include [redacted]

[10] [redacted]

[redacted]

The discovery also does not contain any police reports in which the people we believe to be the complainants reported the alleged crimes to law enforcement. To the contrary, the only police reports provided are exculpatory. [redacted]

In sum, the discovery contains not a single contemporaneous email, text message, phone record, diary entry, police report, or recording that implicates Ms. Maxwell in the 1994-1997 conduct underlying the conspiracy charged in the indictment. The few documents in the discovery that pertain to the people we believe to be the three complainants referenced in the indictment do little, if anything, to support the government's case against Ms. Maxwell:

- [redacted]
- [redacted]

- [redacted]

In addition, the discovery appears to show that, [redacted] the government did not issue subpoenas for documents related to Ms. Maxwell until *after* Epstein's death. Although the discovery does not include the grand jury subpoenas themselves, the subpoena returns appear to indicate that the government began issuing subpoenas for Ms. Maxwell's financial information on August 16, 2019, six days *after* Epstein's death, and issued additional subpoenas in the months that followed. The facts strongly imply that government only chose to pursue a case against Ms. Maxwell—who was not named in the Epstein indictment—because the main target, Jeffrey Epstein, had died in their custody. The lack of corroboration in the discovery confirms that the case against Ms. Maxwell was an afterthought and was reverse engineered based on allegations of 25-year-old conduct from a small number of alleged victims.

Thus, notwithstanding the statement in the government's bail submission, we have been provided with no meaningful documentary corroboration in this case. It appears that the evidence in this case boils down to witness testimony about events that allegedly took place over 25 years ago. Far from creating a flight risk, the lack of corroboration only reinforces Ms. Maxwell's conviction that she has been falsely accused and strengthens her long-standing desire to face the allegations against her and clear her name in court. This factor should weigh heavily in favor of granting Ms. Maxwell bail.

F. The Proposed Bail Package Is Expansive and Far Exceeds What Is Necessary to Reasonably Assure Ms. Maxwell's Presence in Court

In light of the additional information that Ms. Maxwell has provided in connection with this submission, which responds to each of the concerns raised by the government at the initial bail hearing, the government cannot meet its burden to establish that no set of bail conditions would reasonably assure Ms. Maxwell's appearance in court. The proposed bail package is exceptional in its scope, addresses all of the factors that the Court considered in evaluating risk of flight, and is more than sufficient to warrant her release from BOP custody and transfer to restricted home detention.

Courts in this Circuit have ordered release of high-profile defendants with financial means and foreign citizenship on bonds in lower amounts with less or no security with similar or less restrictive conditions:

DEFENDANT	BOND	SECURED	HOME DETENTION	ELECTRONIC MONITORING	PRIVATE SECURITY	U.S. CITIZEN	FOREIGN CITIZENSHIP
SADR	$32.6M aggregate	✓	Nightly Curfew	✓	NO	NO	Iran | St Kitts-Nevis
DREIER	$10M	NO	✓	✓	✓	✓	NO
MADOFF	$10M	✓	✓	✓	NO	✓	NO
KHASHOGGI Extradited from Switzerland	$10M	✓	✓	✓	NO	✓	Saudi Arabia
ESPOSITO	$9.8M	✓	✓	✓	Video Only	✓	NO
SABHNANI Wife	$2.5M	✓	✓	✓	NO	✓	Indonesia
SABHNANI Husband	$2M	✓	✓	✓	NO	✓	India
BODMER Arrested -South Korea	$2M	✓	✓	✓	NO	NO	Switzerland
KARNI No U.S. Ties	$7.5M	✓	✓	✓	NO	NO	Israel | South Africa
HANSON	NOT REPORTED	✓	✓	✓	NO	✓	China
HANSEN Travel to Denmark Permitted	$500K	NO	NO	NO	NO	NO	Denmark
MAXWELL	$28.5M aggregate	✓	✓	✓	✓	✓	UK | France

The Court should also not give any weight to the government's speculative assertions that others might provide money and other support to Ms. Maxwell if she were to flee. (Dkt. 22 at

11-12). Ms. Maxwell is not obligated to rebut every theoretical possibility that the government might raise that may contribute to a potential flight risk in order to be granted bail. That is not the standard. *Cf. United States v. Orta*, 760 F.2d 887, 888 n.4, 892-93 (8th Cir. 1985) ("The legal standard required by the [Bail Reform] Act is one of reasonable assurances, not absolute guarantees."). Ms. Maxwell has no intention of fleeing. If she did, then under the proposed bail conditions she would lose everything and destroy the family she has been fighting so hard to protect since Epstein's arrest. Ms. Maxwell will not do that, and should be granted bail.

G. The Alternative to Bail Is Confinement Under Oppressive Conditions that Impact Ms. Maxwell's Health and Ability to Prepare Her Defense

Granting bail to Ms. Maxwell is all the more appropriate and necessary because the past few months have shown that Ms. Maxwell cannot adequately participate in her defense and prepare for trial from the inside the MDC. The alternative to release is her continued confinement under extraordinarily onerous conditions that are not only unjust and punitive, but also meaningfully impair Ms. Maxwell's ability to review the voluminous discovery produced by the government and to communicate effectively with counsel to prepare her defense.

Ms. Maxwell has spent the entirety of her detention now over five months in de *facto* solitary confinement, under conditions that rival those used at USP Florence ADMAX to supervise the most dangerous inmates in the federal system and are tantamount to imprisonment as a defendant convicted of capital murder and incarcerated on death row. In fact, multiple wardens and interim wardens have remarked that in their collective years of experience they have never seen anything like her current regime. The restrictive regulations to which Ms. Maxwell is subjected are not reasonably related to a legitimate goal to ensure the security of Ms. Maxwell or the MDC. Instead, it seems clear that the overly restrictive conditions are an

exaggerated response to Epstein's death, effectively punishing Ms. Maxwell for the BOP's own negligence with respect to Epstein.[11]

Counsel has attempted to address the restrictions in numerous letters, emails and calls to the MDC warden, the MDC legal department, and the prosecutors, but to no avail. Rather than repeating these points here at length, we refer the Court to our letter to the MDC warden, dated October 29, 2020, which details the most serious and extraordinarily restrictive conditions of confinement.[12] These include:

- *De Facto* Solitary Confinement
- Excessive Surveillance
- Excessive Scanning and Strip Searching
- Deprivation of Food
- Deprivation of Sleep
- Deprivation of Communication with Family and Friends
- Compromised Communication with Legal Counsel

The conditions of Ms. Maxwell's detention are utterly inappropriate, and totally disproportionate for a non-violent pretrial detainee with no prior criminal history facing non-violent charges a quarter-century old. Moreover, they adversely impact her ability to prepare her defense and compromise her physical health and psychological wellbeing.

In addition to these intolerable conditions, Ms. Maxwell has had to contend with numerous unacceptable delays and technical problems with the discovery that the government has produced to her thus far. We have raised these issues with the prosecutors on numerous occasions. As we advised the Court in our letter of October 23, 2020, defense counsel first

[11] These conditions are especially inappropriate because Ms. Maxwell has been an exemplary inmate and has not received any disciplinary infractions since her arrest. In fact, she has been made a suicide watch inmate, which is the highest and most trusted responsibility that an inmate can have. It is the height of irony that Ms. Maxwell is being constantly surveilled as if she were a suicide risk when she, herself, is trusted enough (if she were ever released from isolation) to monitor inmates who are truly at risk of suicide.

[12] The Warden never responded to the letter. In our response to the government's 90-day status report concerning MDC conditions, counsel requested that the Warden provide a first-hand report to the Court and counsel. Following Court directive for a report from the MDC, MDC Legal submitted a letter that recited BOP policy but failed to address a number of concerns.

alerted the government on August 27, 2020 that there were significant portions of the first three discovery productions that Ms. Maxwell could not read. (Dkt. 66). Despite numerous attempts to fix these problems over the succeeding weeks, including producing a replacement hard drive containing these productions, the problems were not resolved and the replacement hard drive was broken. In addition, the fourth and fifth productions, which were produced after the defense alerted the government to these problems, contained some of the same technical problems and included a significant number of unreadable documents. Most recently, the hard drives for the sixth and seventh productions have stopped functioning properly. As a result, Ms. Maxwell has not had access to a complete set of readable discovery for *over four* months.[13] Ms. Maxwell cannot defend herself if she cannot review the discovery.

Most recently, Ms. Maxwell has had to endure the added burdens of quarantine. On November 18, 2020, Ms. Maxwell was given a COVID test and placed in 14-day quarantine due to contact with a staffer who tested positive. The revolving team of guards assigned to Ms. Maxwell, some coming from other BOP institutions confronting their own COVID outbreaks, heightens her exposure to the virus. As reported by the associate warden to the Criminal Justice Advisory Board on December 2, MDC does not mandate testing among its staff. A temperature check and response to a few questions does little to detect an asymptomic carrier. The constant strip searching, touch wanding, and in-mouth checking of Ms. Maxwell heightens her risk for exposure to COVID-19.

[13] On November 18, 2020, the government, at our request, provided a laptop computer to Ms. Maxwell in the MDC, which it believed would remedy the issues with unreadable documents, and has agreed to provide a new hard drive containing all of the discovery. It is too early to tell whether the new laptop and hard drive will solve all of the technical problems. We note, however, that now that Ms. Maxwell has been released from quarantine, she only has access to the laptop from 8am-5pm, five days a week, which will effectively limit her review time to that time slot because of compatibility issues between the recently produced hard drives and the prison computer.

Ms. Maxwell's quarantine period also resulted in cancellation of weekly in-person legal visits. This is likely to continue in light of the spike in COVID infection within and outside the MDC. Within a two-day period from December 1 to December 3, 55 inmates tested positive, compared with 25 from March to December 1. As of the date of this filing, the BOP reports 80 MDC inmates and staff with COVID.[14] If legal visits are suspended, it will further limit our ability to review the voluminous discovery (well in excess of one million documents) with Ms. Maxwell and will further compromise her ability to prepare her defense. Moreover, as this Court observed in *United States v. Stephens*, if an outbreak occurs "substantial medical and security challenges would almost certainly arise." *Stephens*, 447 F. Supp. 3d at 65. We urge the Court to weigh the threat of COVID as a factor favoring release in this case, as it did in *Stephens*.

CONCLUSION

Ghislaine Maxwell is committed to defending herself and wants nothing more than to remain in this country, with her family and friends by her side, so that she can fight the allegations against her and clear her name. She is determined to ensure that her sureties and her family do not suffer because of any breach of the terms of her bond. We have presented a substantial bail package that satisfies the concerns of the Court and the government, which contains more than ample security and safeguards to reasonably assure that Ms. Maxwell remains in New York and appears in court. The Court has the obligation to ensure that a defendant's constitutional right to prepare a defense is safeguarded. The correct—and only legitimate—decision is to grant Ms. Maxwell bail on the proposed strict conditions.

[14] *See* https://www.bop.gov/coronavirus/.

For the foregoing reasons, Ms. Maxwell respectfully requests that the Court order her release on bail pursuant to the conditions she has proposed.

Dated: December 4, 2020

Respectfully submitted,

/s/ Mark S. Cohen

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