



U.S. Department of Justice

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Southern District of New York*

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November 18, 2021

BY E-MAIL

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

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

Dear Judge Nathan:

The Government respectfully submits this letter regarding birth certificates that are marked as Government Exhibits for trial.¹ By way of background, the Government has obtained and produced to the defense certified copies of the birth certificates for each of the Minor Victims. (See GX-11-16). Although the Government has asked the defense to stipulate to the authenticity of these records, and although the defense has identified no reason to doubt the authenticity of these records, the defense has not agreed to a stipulation. Accordingly, the Government seeks the relief in the instant motion, to which it is entitled under the law, and to avoid calling records custodians from five state agencies with custody over the birth certificates.²

¹ The Government moves to file a redacted version this letter motion. The proposed redactions are consistent with the three-part test articulated by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). Although this letter motion is a judicial document subject to the common law presumption of access, the proposed redactions are narrowly tailored to protect the privacy interests of victims, including victims who have not been publicly identified, and who are a subject of the Court's order granting the motion to let certain victims and witnesses testify under pseudonyms, and third parties.

² The Government is coordinating with Department of Justice Office of International Affairs to further establish the predicates for self-authentication of Witness-3's birth certificate and will make the appropriate motion when it is ripe. See Fed. R. Evid. 902(3).

For the reasons set forth below, the birth certificates are self-authenticating under Rule 902 of the Federal Rules of Evidence, and no records custodian should be required to testify. The exhibits should be determined to be self-authenticating.

I. Applicable Law

Rule 902 contains a list of items that are “self-authenticating,” that is “they require no extrinsic evidence of authenticity in order to be admitted.” Fed. R. Evid. 902. Under Rule 902(4), that list includes:

Certified Copies of Public Records. A copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by:

- (A) the custodian or another person authorized to make the certification; or
- (B) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.

Rule 902(1), in turn, provides for self-authentication of the following:

Domestic Public Documents That Are Sealed and Signed. A document that bears:

- (A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and
- (B) a signature purporting to be an execution or attestation.

Finally, Federal Rule of Criminal Procedure 27 permits a party to “prove an official record . . . in the same manner as in a civil action.” Federal Rule of Civil Procedure 44(a)(1), in turn, permits proof of a domestic “official record” that is “otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory” through

a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

. . . (ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

Fed. R. Civ. P. 44(a)(1); *see* Fed. R. Evid. 902 Advisory Committee Notes (“Rule 44(a) of the Rules of Civil Procedure and Rule 27 of the Rules of Criminal Procedure have provided authentication procedures of this nature for both domestic and foreign public records.”).

II. Discussion

The Minor Victims’ birth certificates are certified and sealed by the appropriate officials, and are therefore self-authenticating under Fed. R. Evid. 902(4). *See Ball v. A.O. Smith Corp.*, 451 F.3d 66, 71 (2d Cir. 2006) (“The original transcript, which includes a certification by the court reporter, is self-authenticating. *See* Fed. R. Evid. 902(4).”); *United States v. McGee*, 439 F. App’x 837, 839 (11th Cir. 2011) (“We have held that to satisfy the requirements of Rule 902(4), a certification need only identify the legal custodian's position of authority, and that the copy is true and correct.”).

At the threshold, domestic birth certificates are “public records” within the meaning of Federal Rule of Evidence 902(4). *See* Fed. R. Evid. 803(9) (providing a hearsay exception for “Public Records of Vital Statistics,” including “[a] record of a birth . . . if reported to a public office in accordance with a legal duty.”).

Pursuant to Rule 902(4)(A), a copy of such a record is self-authenticating if “certified as correct by: . . . the custodian or another person authorized to make the certification.” Fed. R. Evid. 902(4)(A). That is the case for each of the birth certificates:

- The [REDACTED] has signed and certified that Government Exhibit 12, Minor Victim-1's birth certificate, is a "true and exact copy of the document officially registered and placed on file in the issuing office."
- The [REDACTED] has signed and certified that Government Exhibit 13, Minor Victim-2's birth certificate, is an "exact reproduction of the certificate for the person named therein as it now appears in the permanent records of the [REDACTED]."
- The [REDACTED], has signed and certified that Government Exhibit 11, Minor Victim-4's birth certificate, is a "true and correct copy of the original Certificate of Birth on file in the Office of the Registrar."
- The [REDACTED], has signed and certified that Government Exhibit 14, Minor Victim-5's birth certificate, is a "true and exact reproduction of the document officially registered and placed on file in the office of the [REDACTED]."
- The [REDACTED] has signed and certified that Government Exhibit 15, Minor Victim-6's birth certificate, is a "true copy" from the Registrar's records "of birth, marriage, and death required by law to be kept in my office."

Each of these certifications is a certification by a custodian sufficient to satisfy the Rule. *See Ratajack v. Brewster Fire Dept.*, 178 F. Supp. 3d 118, 128 n.3 (S.D.N.Y. 2016) (concluding that a transcript was self-authenticating based on a court reporter's certification that it contained a "true record").

The birth certificates are also self-authenticating under Rule 902(4)(B). That rule permits self-authentication based on “a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.” This rule is satisfied in two ways.

First, the certifications comply with Rule 902(1). Each certification bears “a seal purporting to be that of . . . any state . . . ; a political subdivision . . . ; or a department, agency, or officer of” a state. Fed. R. Evid. 902(1)(A). And each certification bears a “signature purporting to be an execution or attestation.” Fed. R. Evid. 902(1)(B). The certifications on the birth certificates therefore meet the requirements of Rule 902(4)(B).

Second, as noted above, Federal Rule of Civil Procedure 44(a)(1) explains that the evidence necessary to “evinced[] an official record” that is “kept within the United States[or] any state” is “a copy attested by the officer with legal custody of the record and accompanied by a certificate that the officer has custody.” Fed. R. Civ. P. 44(a)(1)(B); *see* Fed. R. Crim. P. 27 (incorporating the Federal Rules of Civil Procedure on this subject). That certification must be “made under seal . . . by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.” Fed. R. Civ. P. 44(a)(1)(B)(ii). Each of the certifications described above is by a public officer with official duties in the location where the birth certificate is kept, as stated in the certification, and each is sealed. That is sufficient. *See United States v. Weiland*, 420 F.3d 1062, 1073 (9th Cir. 2005) (concluding that records of prior convictions, fingerprints, and other materials from prison were self-authenticating under Rules 902(2) and 902(4) and that “Federal Rule of Civil Procedure 44(a)(1), incorporated into Federal Rule of Criminal Procedure 27, accords with our analysis.”).

