

Nos. 20-2413 & 20-3061

United States Court of Appeals for the Second Circuit

| | |
|--|---|
| <p>██████████,</p> <p><i>Plaintiff-Appellee,</i></p> | <p>On Appeal from the U.S. District Court for the Southern District of New York</p> |
| <p>v.</p> | <p>No. 15-CV-7433 (LAP)</p> |
| <p>GHISLAINE MAXWELL,</p> <p><i>Defendant- Appellant.</i></p> | <p>The Honorable Loretta A. Preska, U.S. District Judge</p> |
| <hr/> <p>UNITED STATES OF AMERICA,</p> <p><i>Plaintiff-Appellee,</i></p> | <hr/> <p>On Appeal from the U.S. District Court for the Southern District of New York</p> |
| <p>v.</p> | <p>No. 20-CR-330 (AJN)</p> |
| <p>GHISLAINE MAXWELL,</p> <p><i>Defendant-Appellant.</i></p> | <p>The Honorable Alison J. Nathan, U.S. District Judge</p> |

Ghislaine Maxwell's Response to Opposition to Motion to Consolidate

The government and ██████ insist this case and the criminal case are unrelated. But that's not so.

The criminal case alleges that Ms. Maxwell committed perjury in the civil case. Two of the six counts are expressly based on the civil case.

Moreover, the discovery in the criminal case includes 90,000 pages of material produced by ██████ attorneys, all of which comes from the civil case. Those 90,000 pages comprise more than half of all the discovery produced to Ms. Maxwell. It's fanciful to say the two cases aren't related.

The government says it "is not a party to the civil suit" (true), that it "has never intervened or appeared in the civil suit" (also true), that it "has had no role in the litigation that resulted in Judge Preska's order" (true again), and that it has no "legal interest in the relief Maxwell seeks in the civil case" (true and extraordinarily revealing). Doc. 113, ¶ 26.

The government has not intervened in the civil case and it does not have an interest in the relief Ms. Maxwell seeks (keeping the deposition material sealed) because the government wants to argue that its violation of *Martindell* was harmless as soon as the April 2016 deposition transcript is released. After all, if the government were being consistent, it *would have* moved to intervene in the civil

case and to stay the unsealing process, just as it moved to intervene and to stay discovery in *Doe v. Indyke*, a civil case in which Jane Doe alleges that Epstein and Ms. Maxwell abused and exploited her as a minor. According to the government, a stay of that case was necessary to “preserv[e] the integrity of the criminal prosecution against [Ms.] Maxwell.” *Doe v. Indyke et al.*, No. 20-cv-00484, Doc. 81, p 4, 9/14/2020 Order Granting Motion to Stay. The court there agreed, and it granted Ms. Maxwell’s motion to stay. *Id.* at 12. This Court should not let the government engage in such obvious gamesmanship.

The government insists that, in these two appeals, Ms. Maxwell is “ask[ing] this Court to rule on . . . the lawfulness of the Government’s applications to modify certain protective orders in other judicial proceedings.” Doc. 113, ¶ 27. That is not so. The government’s contention mischaracterizes Ms. Maxwell’s argument.

As Ms. Maxwell said in her opening brief:

The civil case is not the appropriate forum to litigate the government’s apparent violation of *Martindell*. Ms. Maxwell intends to make that argument to Judge Nathan in the criminal case. But if Judge Preska’s unsealing order is affirmed and Ms. Maxwell’s deposition is released, her ability to make that argument before Judge Nathan will be prejudiced. Keeping the deposition material sealed will preserve the status quo and protect Ms. Maxwell’s right to litigate *Martindell* and the Fifth Amendment in the criminal proceeding.

Doc. 69, p 33. Only by mischaracterizing Ms. Maxwell’s argument can the government contend that she is “ask[ing] this Court to rule on . . . the lawfulness of

the Government's applications to modify certain protective orders in other judicial proceedings." Ms. Maxwell's point is that, unless the unsealing order is reversed, she might not ever be able to litigate "the lawfulness of the Government's applications."

Moreover, the motion to consolidate is not an attempt to circumvent Judge Nathan's order before this Court can reach the merits. The motion to consolidate simply endeavors to ensure that this Court does not find itself in the same position as the several judges below, where only some of the judges are privy to the relevant facts.

There is no merit to ██████████ argument that consolidation will cause meaningful delay. Doc. 123, pp 4-5. This Court has scheduled oral argument in both cases on the same day, as well as an argument on the motion to consolidate. Whether that motion is granted or not will have no effect on the dispatch with which this Court addresses the issues.

This Court should grant the motion to consolidate.

September 23, 2020.

Respectfully submitted,

s/ Adam Mueller

Ty Gee

Adam Mueller

HADDON, MORGAN AND FOREMAN, P.C.

150 East 10th Avenue

Denver, CO 80203

Tel 303.831.7364

Fax 303.832.2628

tgee@hmflaw.com

amueller@hmflaw.com

*Counsel for Defendant-Appellant Ghislaine
Maxwell*

Certificate of Compliance with Rule 32(g)

Counsel hereby certifies that this response brief complies with the type-volume limitation of Fed. R. App. P. 32(g) and it contains 670 words.

s/ Adam Mueller

Certificate of Service

I certify that on September 23, 2020, I filed *Ghislaine Maxwell's Response to Opposition to Motion to Consolidate* with the Court via CM/ECF, which will send notification of the filing to all counsel of record.

s/ Nicole Simmons
