

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: Renewed Motion for Pretrial Release

Set forth below precise, complete statement of relief sought: Ghislaine Maxwell renews her motion for pretrial release or in the alternative, remand for an evidentiary hearing.

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: [Redacted], AUSA

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

Markus/Moss PLLC

United States Attorney's Office, So. Dist. of NY

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):

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

Has this request for relief been made below? Has this relief been previously sought in this court? Requested return date and explanation of emergency:

Opposing counsel's position on motion: Unopposed Opposed Don't Know Does opposing counsel intend to file a response: Yes No Don't Know

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

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

Signature of Moving Attorney:

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

No. 21-770 & 21-58

In the
**United States Court of Appeals
for the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

v.

GHISLAINE MAXWELL,

Appellant.

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

**Appellant Ghislaine Maxwell's Renewed
Motion for Pretrial Release**

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Appellant Ghislaine Maxwell's Renewed Motion for Bond

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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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 2,038 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(d)(2).

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

/s/ David Oscar Markus
David Oscar Markus

CERTIFICATE OF SERVICE

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

/s/ David Oscar Markus
David Oscar Markus