

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA

Appellee,

- v. -

GHISLAINE MAXWELL,

Defendant-Appellant.

----- X

STATE OF NEW YORK)

COUNTY OF NEW YORK : ss.:

SOUTHERN DISTRICT OF NEW YORK)

: Dkt. Nos. 21-58, 21-770

: **AFFIRMATION IN OPPOSITION
TO DEFENDANT'S
RENEWED MOTION FOR
PRETRIAL RELEASE**

:

:

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

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

PRELIMINARY STATEMENT

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

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

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

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

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

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

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

STATEMENT OF FACTS

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

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

sexual abuse of multiple minor victims by Jeffrey Epstein between approximately 1994 and 1997.² (Ind. ¶ 1). During that period, Maxwell played a key role in Epstein’s sexual abuse of minor girls by helping to identify, entice, and groom minor victims, who were as young as 14 years old, to engage in sex acts with Epstein. (*Id.*). Together, Maxwell and Epstein conspired to entice and cause minor victims to travel to Epstein’s residences in different states, which Maxwell knew and intended would result in their grooming for and subjection to sexual abuse. (Ind. ¶ 2). To conceal her crimes, Maxwell lied under oath during a civil deposition, including when asked about her interactions with minor girls. (*Id.*).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARGUMENT

Maxwell's Motion Should Be Denied

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

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

A. Applicable Law

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

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

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

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

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

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

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

B. Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Dated: New York, New York
May 27, 2021

[REDACTED]

Assistant United States Attorneys
Southern District of New York

[REDACTED]

CERTIFICATE OF COMPLIANCE

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

/s/ [REDACTED]
[REDACTED]

Assistant United States Attorney
Southern District of New York
[REDACTED]