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

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

Markus/Moss PLLC

40 NW Third Street, PH 1, Miami, FL 33128 [redacted]

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

1 St. Andrew's Plaza, New York, New York 10007

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]

Form T-1080 (rev. 12-13)

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).

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 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

Doc. 306 *United States v. Dashawn Robertson*,
Case Number 17-cr-02949-MV1, District of New Mexico
Memorandum Opinion and Order ..... N

Respectfully submitted,

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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
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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

----------x

UNITED STATES OF AMERICA :

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

GHISLAINE MAXWELL, :

Defendant. :

----------x

THE GOVERNMENT'S MEMORANDUM IN SUPPORT OF DETENTION

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

[redacted]
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 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,

[redacted]
Acting United States Attorney

By: [redacted]

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,	20 Cr. 330 (AJN)
v.	
GHISLAINE MAXWELL,	
Defendant.	

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

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[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

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[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").

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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).

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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

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UNITED STATES OF AMERICA :

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

GHISLAINE MAXWELL, :

Defendant. :

----------x

THE GOVERNMENT'S REPLY MEMORANDUM IN SUPPORT OF DETENTION

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

[redacted]
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

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

[redacted]
United States Attorney for the
Southern District of New York
BY: [redacted]
Assistant United States Attorneys

COHEN & GRESSER, LLP
Attorneys for Defendant
BY: MARK S. COHEN
CHRISTIAN R. EVERDELL

HADDON MORGAN & FOREMAN, P.C.
Attorneys for Defendant
BY: JEFFREY S. PAGLIUCA
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.

[redacted]: 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.

[redacted]: Good afternoon, your Honor. [redacted] for the government. I'm joined by my colleagues [redacted] and [redacted]. 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.

[redacted]: Thank you, your Honor.

(Pause)

[redacted]: 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.

[redacted]: Yes, your Honor. Thank you. We will do that.

THE COURT: All right.

[redacted]: 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.

[redacted], does the government wish to be heard on that?

[redacted]: 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: [redacted]?

[redacted]: 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.

[redacted], am I correct that this is an arraignment on the S1 superseding indictment?

[redacted]: That's correct, your Honor.

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

[redacted]: 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. [redacted], 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, [redacted].

[redacted]: 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?

[redacted]: 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?

[redacted]: 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.

[redacted]: 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, [redacted]?

[redacted]: 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.

[redacted]: 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.

[redacted], do you agree?

[redacted]: 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, [redacted], 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?

[redacted]: 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, [redacted], 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.

[redacted]: 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 [redacted] and supplemented by you?

MR. COHEN: Yes, your Honor.

THE COURT: All right. Thank you.

And, [redacted], you continue to support the proposed schedule?

[redacted]: 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, [redacted], if we are going to proceed to trial, how long of a trial does the government anticipate?

[redacted]: 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.

[redacted]?

[redacted]: Nothing further from the government regarding scheduling, your Honor. Thank you.

THE COURT: Okay. And, [redacted], does the government seek to exclude time under the Speedy Trial Act?

[redacted]: 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 [redacted] 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: [redacted]?

[redacted]: 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: [redacted].

[redacted]: 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: [redacted]?

[redacted]: -- property.

THE COURT: [redacted], 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?

[redacted]: 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.

[redacted]: 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: [redacted], 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?

[redacted]: 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, [redacted], 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?

[redacted]: 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: [redacted] --

[redacted]: -- ability --

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

[redacted]: 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?

[redacted]: 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.

[redacted]: 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, [redacted].

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?

[redacted]: That's correct, your Honor.

THE COURT: All right. Thank you.

[redacted], 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?

[redacted]: 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.

[redacted]: 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.

[redacted], would you indicate how the victim who wishes to be heard should be recognized?

[redacted]: 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 [redacted].

THE COURT: All right. I will ask my staff to please unmute [redacted].

[redacted]: Can you hear me, your Honor?

THE COURT: I can, [redacted]. You may proceed.

[redacted]: 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, [redacted]. All right.

And, [redacted], 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?

[redacted]: No, your Honor. Thank you.

THE COURT: And, [redacted], 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?

[redacted]: That's correct, your Honor.

THE COURT: All right. [redacted], anything further before I hear from Mr. Cohen?

[redacted]: No, your Honor. Thank you very much.

THE COURT: Thank you, [redacted].

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, [redacted] 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.

[redacted], would the government like a brief reply?

[redacted]: 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, [redacted], 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?

[redacted]: 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?

[redacted]: 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.

[redacted]: 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.

[redacted]?

[redacted]: 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

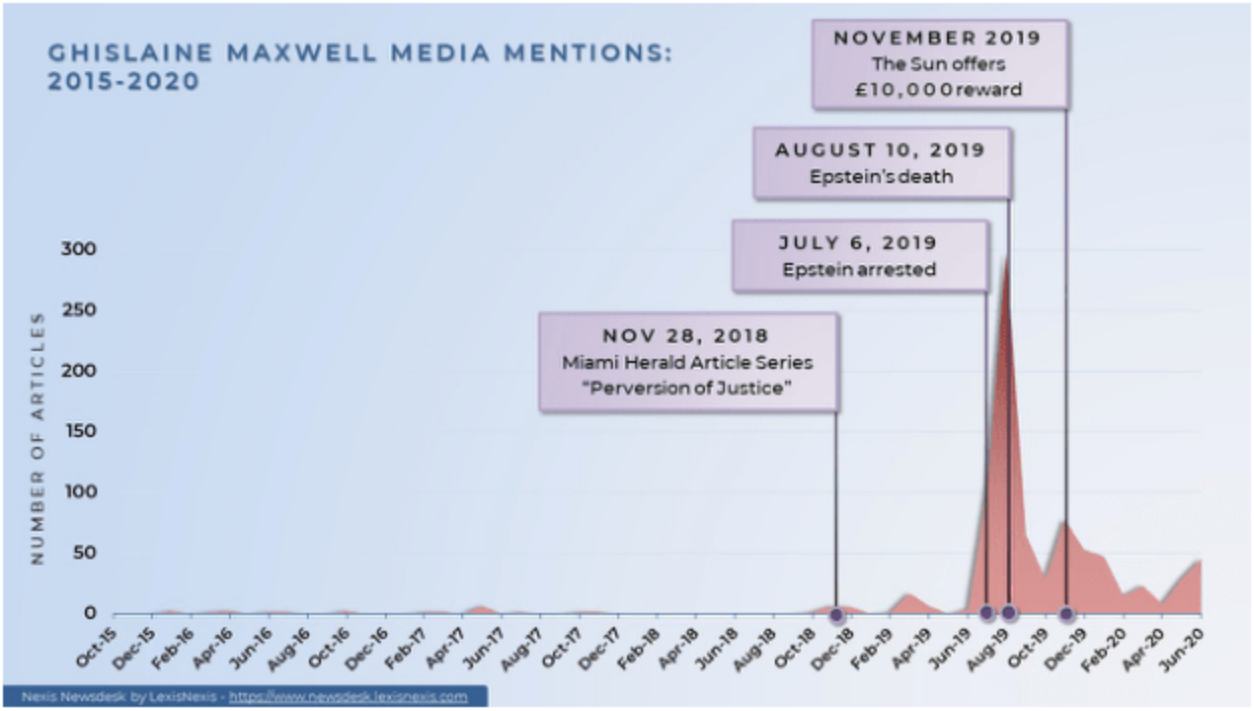
1. Ms. Maxwell Was Trying to Protect Herself [redacted] from a Media Frenzy and from Physical Threats

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!

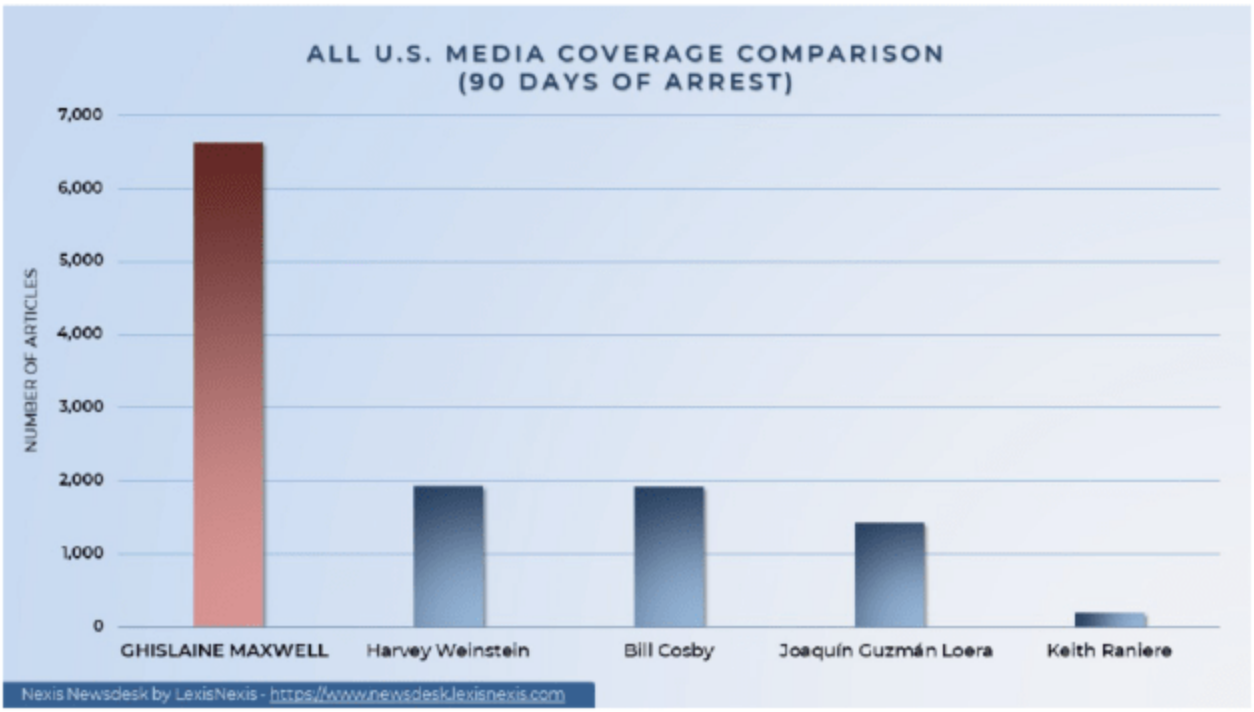
The intense media attention and violent threats made it no longer possible for Ms. Maxwell [redacted] to live a quiet life and required Ms. Maxwell to take more drastic steps to protect herself [redacted]. Rather than see [redacted] harmed by even more unwanted media attention, Ms. Maxwell made the difficult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

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
BOOMER 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 d*e 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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Exhibit F

Doc. 100
The Government's Memorandum in Support to the Defendant's Renewed Motion for Release

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

THE GOVERNMENT'S MEMORANDUM IN OPPOSITION TO THE DEFENDANT'S RENEWED MOTION FOR RELEASE

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

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Assistant United States Attorneys
- Of Counsel -

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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. :

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THE GOVERNMENT'S MEMORANDUM IN OPPOSITION TO THE DEFENDANT'S RENEWED MOTION FOR RELEASE

The Government respectfully submits this memorandum in opposition to the defendant's renewed motion for release on bail, dated December 8, 2020 (the "Renewed Bail Motion"). Five months ago, after thorough briefing and a nearly two-hour hearing, this Court concluded that the defendant posed a serious flight risk and that no condition or combination of conditions could ensure her appearance in court. The defense now asks this Court to reverse that finding by essentially repackaging its prior arguments and presenting a more specific bail package. However, at the July 14, 2020 bail hearing in this case, this Court rejected the defendant's request to keep the record open to allow the defendant to do precisely what she has done here—namely, present more detailed information about her finances and a more concrete package—determining that further information about her financial picture would be irrelevant because no combination of conditions could ensure this defendant's appearance. The Court's conclusion was plainly correct, and the Renewed Bail Motion does nothing to undermine it. The offense conduct outlined in the Indictment remains incredibly serious, the evidence against the defendant remains strong, and the defendant continues to have extensive financial resources and foreign ties, as well as the

demonstrated ability to live in hiding for the long term. In short, the defendant poses an extreme flight risk, no condition or combination of conditions can reasonably ensure her appearance in this District, and the Court should not alter its prior finding to that effect.

BACKGROUND

As detailed in the Indictment, the defendant is charged with facilitating the sexual abuse of multiple minor victims by Jeffrey Epstein between approximately 1994 and 1997. The defendant played a critical role in the scheme by helping to identify, entice, and groom minor girls to engage in sex acts with Epstein. The defendant's presence as an adult woman normalized Epstein's abusive behavior, and she even took part in at least some acts of sexual abuse. Together, the defendant and Epstein conspired to entice and cause 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. Then, in an effort to cover up her crimes, the defendant lied under oath during a civil deposition, including when asked about her interactions with minor girls.

Based on that conduct, the Indictment charges the defendant in six counts. Count One charges the defendant with conspiring with Epstein and others to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charges the defendant 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 the defendant with conspiring with Epstein and others to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371. Count Four charges the defendant with transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. §§ 2423 and 2. Counts Five and Six charge the defendant with perjury, in violation of 18 U.S.C. § 1623.

On July 2, 2020, the Federal Bureau of Investigation ("FBI") arrested the defendant. Following extensive briefing, on July 14, 2020, the Court held a lengthy bail hearing. In its written and oral submissions, the defense urged the Court to release the defendant on bail.

Among other things, the defense emphasized the defendant's family ties and residence in the United States (Dkt. 18 at 2, 3, 12), offered to hire a private security company to monitor the defendant (*Id.* at 20), noted that the defendant remained in the country and was in touch with the Government through counsel following Epstein's arrest (Dkt. 18 at 12-13; Tr. 49, 52-55), argued that the defendant went into hiding to avoid a media frenzy (Dkt. 18 at 14-16; Tr. 55-56), and argued that detention would hamper the ability to prepare a defense (Tr. 42, 67-69). Responding to the Government's concerns about the lack of transparency about the defendant's finances and six proposed co-signers, the defense specifically asked the Court to keep the proceedings open if the Court believed additional information or a more fulsome bond would be useful to the bail determination. (Tr. 52 ("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."); Tr. 59 ("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."); Tr. 66 ("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."); Tr. 70 ("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.")).

The Court declined the defense's request and instead concluded that the defendant posed a serious flight risk and that no combination of conditions could ensure her appearance. First, the Court found that "the nature and circumstances of the offense here weigh in favor of detention," given the statutory presumption of detention triggered by charges involving minor victims and the potential penalties those charges carry. (Tr. 82). Second, the Court determined that "[t]he government's evidence at this early juncture of the case appears strong" based on the "multiple victims who provided detailed accounts of Ms. Maxwell's involvement in serious crimes," as well as corroboration in the form of "significant contemporaneous documentary evidence." (*Id.*). Third, the Court found that the defendant's history and characteristics demonstrate that the defendant poses a risk of flight. (Tr. 83).

In addressing that third factor, the Court emphasized the defendant's "substantial international ties," which "could facilitate living abroad," including "multiple foreign citizenships," "familial and personal connections abroad," and "at least one foreign property of significant value." (Tr. 83). The Court also noted that the defendant "is a citizen of France, a nation that does not appear to extradite its citizens." (*Id.*). The Court further found that the defendant "possesses extraordinary financial resources" and 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." (Tr. 83-84).

Although the Court recognized that the defendant "does have some family and personal connections to the United States," the Court highlighted "the absence of any dependents, significant family ties or employment in the United States" in support of the conclusion that "flight

would not pose an insurmountable burden for her." (Tr. 84). The Court recognized the defense arguments that the defendant did not leave the United States after Epstein's arrest and was in contact with the Government through counsel, but emphasized that the defendant may have expected that she would not be prosecuted. (Tr. 84-85). The Court also noted that the defendant "did not provide the government with her whereabouts," and that the "[c]ircumstances of her arrest . . . 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 she was actually indicted." (Tr. 85). Based on all of those factors, the Court found that the Government had carried its burden of demonstrating that the defendant "poses a substantial actual risk of flight." (Tr. 86).

The Court then concluded that "even the most restrictive conditions of release would be insufficient" to ensure the defendant's appearance. (*Id.*). Acknowledging that the defense's initial bail package represented only a fraction of the defendant's assets, the Court found that "even a substantially larger package would be insufficient." (*Id.*). Although the defendant "apparently failed to submit a full accounting or even close to full accounting of her financial situation," the Court implicitly rejected the defense's offer to provide additional information by determining that "*[e]ven if* the picture of her financial resources were not opaque, as it is, detention would still be appropriate." (Tr. 86-87 (emphasis added)). That conclusion was informed not only by the defendant's "significant financial resources," but also her "demonstrated sophistication in hiding those resources and herself." (Tr. 87). "Even assuming that Ms. Maxwell only wanted to hide from the press and the public," the Court emphasized that the defendant's "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." (*Id.*). Given that sophistication,

the Court concluded that electronic monitoring and home security guards "would be insufficient" because the defendant could remove the monitor and evade security guards. (Tr. 87-88). Finally, the Court rejected the defense's arguments about the risks of COVID-19 and the difficulty of preparing a defense with an incarcerated client. In so doing, the Court noted that the defendant has no underlying conditions that place her at heightened risk of complications from COVID-19 and emphasized that the defendant had many months to prepare for trial. (Tr. 89-90).

Viewing all of these factors together, the Court ordered the defendant detained pending trial. (Tr. 91).

APPLICABLE LAW

Under the Bail Reform Act, 18 U.S.C. §§ 3141 et seq., federal courts are empowered to order a defendant detained pending trial upon a determination that the defendant poses a risk of flight. 18 U.S.C. § 3142(e). When seeking detention on this ground, "[t]he 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 his presence in court.'" *United States v. Boustani*, 932 F.3d 79, 81 (2d Cir. 2019) (quoting *United States v. Sabhani*, 493 F.3d 63, 75 (2d Cir. 2007)). The Bail Reform Act lists three factors to be considered in the detention analysis when the Government seeks detention based on flight risk: (1) the nature and circumstances of the crimes charged; (2) the weight of the evidence against the person; and (3) the history and characteristics of the defendant, including the person's "character . . . [and] financial resources." *See* 18 U.S.C. § 3142(g). If a judicial officer concludes that "no condition or combination of conditions will reasonably assure the appearance of the person as required . . . 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). 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. English*, 629 F.3d 311, 319 (2d Cir. 2011) (quoting *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001)). The act of producing such evidence, however, "does not eliminate the presumption favoring detention." *Id.* Rather, the presumption "remains a factor to be considered among those weighed by the district court," while the Government retains the ultimate burden of demonstrating that the defendant presents a risk of flight. *Mercedes*, 254 F.3d at 436.

When the Court has already issued a detention order, the Bail Reform Act provides that the detention hearing "may be reopened . . . 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 of whether there are conditions of release that will reasonably assure the appearance" of the defendant. 18 U.S.C. § 3142(f). Accordingly, "[a] court may properly reject an attempt to reopen a detention hearing where the new information presented is immaterial to the issue of flight risk." *United States v. Petrov*, 15 Cr. 66 (LTS), 2015 WL 11022886, at *2 (S.D.N.Y. Mar. 26, 2015). Although courts in this Circuit have recognized that "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*, 02 Cr. 756 (LMM), 2003 WL 21196846, at *1 (S.D.N.Y. May 21, 2003), generally the moving party must establish that its arguments "warrant

reconsideration" by, for example, demonstrating "that the court overlooked information or incorrectly applied the law," or that failure to reconsider "would constitute manifest injustice." *Petrov*, 2015 WL 1102286 at *3.

DISCUSSION

Having already raised numerous arguments in its briefing and oral argument at the initial bail hearing in this case, the defense now asks this Court to reverse itself based on virtually the same arguments it already rejected. The Renewed Bail Application largely reiterates the same claims regarding the defendant's ties to the United States and her behavior after Epstein's arrest that the Court already found unpersuasive. To the extent the Renewed Bail Application presents new information, it consists primarily of financial data that was certainly known to the defendant at the time of her initial bail application and that the Court already assumed could be made available (and thus rejected as immaterial) when ordering detention. Ultimately, nothing in the Renewed Bail Application alters the analysis that led this Court to conclude that the defendant "poses a substantial actual risk of flight," and that no combination of conditions could assure her appearance. (Tr. 86). All three of the relevant Bail Reform Act factors still weigh heavily in favor of detention, and the defense claims to the contrary do not warrant a revisiting of this Court's well-reasoned and thorough prior decision.

A. The Nature and Circumstances of the Offense

The first Bail Reform Act factor indisputably weighs in favor of detention in this case. The egregious conduct charged in the Indictment gives rise to a statutory presumption of detention, and the Renewed Bail Motion makes no effort to challenge this Court's prior conclusion that the nature and circumstances of the offense support detention. The charges in the Indictment describe horrendous conduct involving the sexual abuse of multiple minor victims. If convicted, the

defendant faces up to 35 years of incarceration, and may very well spend the remainder of her natural life in prison. The seriousness of the offenses make such a steep penalty a real possibility upon conviction, thereby giving the defendant an overwhelming incentive to flee if given the chance.

In light of that strong incentive to flee, all three of the victims listed in the Indictment have asked the Government to convey to the Court that they continue to seek the defendant's detention. Additionally, pursuant to the Crime Victims' Rights Act, one of the victims has provided a written statement urging the Court to deny bail, which is attached as Exhibit A hereto. That unanimous view of the victims reflects three related reasons that this factor weighs so heavily in favor of detention. First, the victims sincerely fear that if the defendant is released, she will be able to evade justice. Second, the pain that the victims still feel to this day as a result of the defendant's conduct supports the conclusion that this offense is especially serious and may result in a lengthy sentence. Third, as discussed further below, the victims' attention to this case and willingness to convey their views reflects their commitment to take the stand and testify at the defendant's trial, demonstrating the strength of the Government's case.

In short, this factor offers no reason to reverse the prior detention order.

B. The Strength of the Evidence

Further incentivizing the defendant to flee, the Government's evidence remains strong. As the Court recognized when analyzing this factor at the July 14, 2020 hearing, the central evidence in the Government's case will come from the detailed testimony of three different victims, who will each independently describe how the defendant groomed and enticed them to engage in sexual activity with Jeffrey Epstein. (Tr. 82). The Indictment itself contains a description of the accounts these victims have provided law enforcement, which corroborate each other in meaningful part.

Further, and as set forth below, those victims' accounts are corroborated by other evidence, including contemporary documents and other witnesses.

In challenging this factor, the defense essentially restates its prior arguments on this score. At the original hearing, the defense argued that the Government's case was weak because it rested heavily on witness testimony regarding events from 25 years ago. (*See* Dkt. 18 at 19; Tr. 64-65). Having received and reviewed the discovery, the defense now contends the Government's corroborating evidence—some of which the Motion itself identifies—is insufficient and reiterates defense complaints that the discovery does not include other types of evidence.[1] (*See* Mot. at 30-33).

None of the defense arguments on this score changes the calculus for this factor. Three different victims are prepared to provide detailed testimony describing the defendant's role in Epstein's criminal scheme to sexually abuse them as minors. As demonstrated by the information outlined in the Indictment, these accounts corroborate each other by independently describing the same techniques used by the defendant and Epstein to groom and entice minor girls to engage in sex acts. Each victim will describe how the defendant befriended her, asked detailed questions about her life, and then normalized sexual activity around Epstein. Each victim will describe the use of massage as a technique to transition into sexual activity. Each victim will describe how the presence of an adult woman manipulated her into entering an abusive situation. In other words, this is a case that involves multiple witnesses describing the same course of conduct, substantially corroborating each other.

[1] At the initial bail hearing, the defendant also raised a series of legal challenges she intended to make on the face of the Indictment, all of which she contended weighed in favor of granting bail. After receiving discovery, the defense now appears to have abandoned those arguments, at least insofar as they pertain to the issue of bail.

In addition to corroborating each other, these victims' accounts are further corroborated by other witnesses and by documentary evidence, which has been produced in discovery. That evidence will make it virtually indisputable that these victims in fact met and interacted with both the defendant and Jeffrey Epstein at the times and locations they describe. [redacted] Beyond this documentary evidence, additional witnesses will confirm that both the defendant and Epstein knew and interacted with certain minor victims when those victims were minors. In other words, the Government's evidence strongly corroborates the victims' testimony that they met and interacted with the defendant and Epstein at particular times and in particular places.

In the instant motion, the defendant complains that the documentary evidence relevant to the three victims identified in the Indictment and produced to date is not sufficiently voluminous

[2] In its Renewed Bail Motion, the defense complains [redacted]

and that certain of the corroborating documentary evidence does not specifically name Maxwell. Leaving aside the fact that volume is not a reliable proxy for quality, by its very nature, abusive sexual contact is not the type of crime that leaves extensive documentary evidence. But, as described above, [redacted]. To the extent other corroborative documents refer only to Epstein, they still support these victims' testimony, which will detail their interactions with both the defendant and her co-conspirator, Epstein. In other words, documentary evidence does exist, and as the Court has already found, the combination of multiple victims describing the same scheme, together with documents and other witnesses confirming that those victims did indeed interact with the defendant and Epstein at the times and places they say they did, makes this a strong case. (Tr. 82).

Taken together, this evidence confirms that the Government's case remains as strong as it was at the time of the defendant's arrest. Accordingly, this factor continues to weigh heavily in favor of detention.

C. The Characteristics of the Defendant

The defendant's history and characteristics include significant foreign ties, millions of dollars in cash that she largely transferred to her spouse in the last five years, among other assets, and a demonstrated willingness and sophisticated ability to live in hiding. The bulk of the arguments in the Renewed Bail Motion focus on this factor in a manner that largely rehashes claims that this Court already considered at the July 14, 2020 hearing. Any new information provided was either known by the defense at the time of the initial hearing, assumed to be the case when the Court analyzed this factor at the initial hearing, or, in the case of the defense report regarding

French law, is simply incorrect. Accordingly, the defendant's foreign ties, wealth, and skill at avoiding detection continue to weigh in favor of detention.

First, there can be no serious dispute that the defendant has foreign ties. She is a citizen of three countries and holds three passports. As was already noted at the original hearing and is again evidenced in the Renewed Bail Application, the defendant has close relatives and friends who live abroad, as well as a multi-million dollar foreign property and at least one foreign bank account. (Tr. 83). In an attempt to minimize the defendant's foreign ties, the defense emphasizes the defendant's relatives and friends in the United States, history of residence in the United States, and United States citizenship. But the Court was already aware of those factors when making its original detention decision. (*See* Tr. 84; Dkt. 18 at 2, 12). The letters and documentation included in the Renewed Bail Motion simply prove points that were not in dispute. What that documentation does not do, however, is suggest that the defendant has the kind of ties to this country that come with any employment in the United States or any dependents living here. Indeed, as noted in the Pretrial Services Report, the defendant stated in July that she has no children and has no current employment. (Pretrial Services Report at 3).

The Renewed Bail Motion fails to establish sufficiently strong ties to the United States that would prevent her from fleeing. Although the defendant now claims her marriage would keep her in the United States, her motion does not address the plainly inconsistent statements she made to Pretrial Services at the time of her arrest, when, as documented in the Pretrial Services Report, the defendant said she was "in the process of divorcing her husband." (*Id.*). On this point, it bears noting that the defendant's motion asks that she be permitted to live with [redacted] if granted bail, not her spouse. Moreover, the fact that the defendant's spouse has only now come forward to support the defendant should be afforded little weight given that he refused to come forward at the

time of her arrest. While a friend's desire to avoid publicity may be understandable, a spouse's desire to distance himself in that manner—particularly when coupled with the defendant's inconsistent statements about the state of their relationship—undermine her assertion that her marriage is a tie that would keep her in the United States.[3] As for the defendant's asserted relationships with [redacted] and other relatives in the United States, the defendant did not appear to have an issue living alone without these relatives while she was in hiding in New Hampshire, which undercuts any suggestion that these ties would keep her in the United States. In any event, the defendant could easily receive visits from her family members while living abroad, and, as noted, the defendant has multiple family members and friends who live abroad.

In addition to those foreign connections and ample means to flee discussed further below, the defendant will have the ability, once gone, to frustrate any potential extradition. Attempting to downplay that concern, the defense relies on two legal opinions to claim that the defendant can irrevocably waive her extradition rights with respect to both the United Kingdom and France. (Mot. at 25; Def. Ex. U; Def. Ex. V). But the defendant's offer to sign a so-called "irrevocable waiver of her extradition rights" is ultimately meaningless: it provides no additional reassurance whatsoever and, with respect to France, is based on an erroneous assessment of France's position on the extradition of its nationals. (Mot. at 25).

As an initial matter, the Government would need to seek the arrest of the defendant before such a waiver would even come into play. Even assuming the defendant could be located and apprehended—which is quite an assumption given the defendant's access to substantial wealth and

[3] Adding to this confusion, bank records reflect that when the defendant and her spouse established a trust account in or about 2018, they filled out forms in which they were required to provide personal information, including marital status. On those forms, both the defendant and her spouse listed their marital status as "single." It is unclear why the defendant did not disclose her marital status to the bank, but that lack of candor on a bank form mirrors her lack of candor with Pretrial Services in this case, discussed further below.

demonstrated ability to live in hiding—numerous courts have recognized that purported waivers of extradition are unenforceable and effectively meaningless. *See, e.g.*, *United States v. Epstein*, 425 F. Supp. 3d 306, 325 (S.D.N.Y. 2019) ("The Defense proposal to give advance consent to extradition and waiver of extradition rights is, in the Court's view, an empty gesture. And, it comes into [play] only after [the defendant] has fled the Court's jurisdiction."); *United States v. Morrison*, No. 16-MR-118, 2016 WL 7421924, at *4 (W.D.N.Y. Dec. 23, 2016); *United States v. Kazeem*, No. 15 Cr. 172, 2015 WL 4645357, at *3 (D. Or. Aug. 3, 2015); *United States v. Young*, Nos. 12 Cr. 502, 12 Cr. 645, 2013 WL 12131300, at *7 (D. Utah Aug. 27, 2013); *United States v. Cohen*, No. C 10-00547, 2010 WL 5387757, at *9 n.11 (N.D. Cal. Dec. 20, 2010); *United States v. Bohn*, 330 F. Supp. 2d 960, 961 (W.D. Tenn. 2004); *United States v. Stroh*, No. 396 Cr. 139, 2000 WL 1832956, at *5 (D. Conn. Nov. 3, 2000); *United States v. Botero*, 604 F. Supp. 1028, 1035 (S.D. Fla. 1985).[4] For very good reason: Any defendant who signs such a purported waiver and then flees will assuredly contest the validity and/or voluntariness of the waiver, and will get to do so in

[4] The defense argues that several courts "have addressed concerns about a defendant's ties to a foreign state that enforces extradition waiver by requiring the defendant to execute such a waiver as a condition of release." (Mot. at 26). In the cases cited by the defendant, the courts approved the release of the defendants based on the particular facts, but did not address at all the question of whether a waiver of extradition is enforceable. *See United States v. Khashoggi*, 717 F. Supp. 1048, 1050-52 (S.D.N.Y. 1989) (noting, among other things, that the Government's case was "novel," and presented an "untried theory of liability" and that the defendant not only waived his right to appeal extradition in Switzerland but that he traveled immediately to the United States for arraignment, and that his country's government committed to ensuring his appearance at trial); *United States v. Salvagno*, 314 F. Supp. 2d 115, 119 (N.D.N.Y. 2004) (denying Government motion to remand after trial where court found defendant not likely to flee); *United States v. Chen*, 820 F. Supp. 1205, 1209, 1212 (N.D. Cal. 1992) (reconsidering pretrial release where case had "taken a number of surprising turns," including the "suppression of video evidence, the indeterminate stay of proceedings, the overall uncertainty of the government's evidence"); *United States v. Karni*, 298 F. Supp. 2d 129, 133 (D.D.C. 2004); *United States v. Cirillo*, No. 99-1514, 1999 WL 1456536, at *2 (3d Cir. July 13, 1999); *see also United States v. Georgiou*, No. 08-1220-M, 2008 WL 4306750, at *3 (E.D. Pa. Sept. 22, 2008) (distinguishing *Cirillo* on the facts and noting that "defense counsel concedes that a waiver of extradition may not be enforceable in Canada, a fact the court in *Cirillo* did not mention in its opinion").

the jurisdiction of her choosing (*i.e.*, the one to which she chose to flee). The Department of Justice's Office of International Affairs ("OIA") is unaware of any country anywhere in the world that would consider an anticipatory extradition waiver binding. Indeed, the defendant's own experts' conclusion—that "because of these waivers and other factors, it is highly unlikely that she would be able to resist extradition successfully," (Mot. at 27)—leaves open the possibility that she could avoid extradition.

Such an outcome is virtually a certainty as to France, a country of which the defendant is a citizen and which does not extradite its citizens to the United States. To confirm this fact, after receiving the Renewed Bail Motion, the Government, through OIA, contacted the French Ministry of Justice ("MOJ") to clarify whether there is any circumstance under which France would extradite a French citizen to the United States. In response, the MOJ provided the Government with a letter setting forth the relevant law and conclusively stating that France does not extradite its citizens to the United States. That letter in its original French, as well as an English translation of the letter, are attached hereto as Exhibit B. In that letter, the MOJ makes clear that France does not extradite its nationals outside the European Union (regardless of the existence of dual citizenship), including to the United States, and has never derogated from that principle outside the European Union. *See* Ex. B; *see also United States v. Cilins*, No. 13 Cr. 315 (WHP), 2013 WL 3802012, at *2 (S.D.N.Y. July 19, 2013) ("Because France refuses to extradite its citizens, Cilins can avoid prosecution on this Indictment if he can reach French soil.").

In other words, even assuming the Government could locate the defendant, if she flees to France, her citizenship in that country will completely bar her extradition. Any purported waiver of extradition executed in the United States would not be enforceable against the defendant in France because French law embodies an inflexible principle that its citizens will not be extradited

to other countries outside of the European Union, including the United States. As set forth in Exhibit B, according to the MOJ, the French Code of Criminal Procedure "absolutely prohibits the extradition of a person who had French nationality at the time of the commission of the acts for which extradition is requested." (Ex. B at 3). That the defendant is a citizen of multiple countries is of no moment. (*See id.*). In applying the Bilateral Extradition Treaty between the United States and France and the "general principle of non-extradition of nationals under French law, France systematically refuses to grant the extradition of French nationals to the American judicial authorities." (*Id.* at 4). Thus, contrary to the suggestion of the defense submission, any anticipatory waiver of extradition would not be effective under French law, and would not be recognizable by French courts in any extradition process, or otherwise enforceable.

The defendant's expert writes that "[i]n the recent past," he is "not aware that the French authorities would have had to address the situation in which the United States sought extradition of a French citizen who was also a United States citizen. Thus, there is no precedent to draw from in that regard." (Def. Ex. V. at 2). That is not so. France has previously rejected such a request. For example, in 2006, Hans Peterson, an American citizen and French national, turned himself in to French authorities in Guadeloupe and confessed to committing a murder in the United States. Despite turning himself in to French authorities, Peterson remained beyond the reach of U.S. law enforcement despite the repeated requests of OIA and U.S. officials. *See Durbin, Schakowsky, Emanuel Urge French Justice Minister To Ensure Justice Is Done During Hans Peterson Retrial* (Nov. 16, 2012), https://www.durbin.senate.gov/newsroom/press-releases/durbin-schakowsky-emanuel-urge-french-justice-minister-to-ensure-justice-is-done-during-hans-peterson-retrial; *see also Senators' letter to French government* (Mar. 14, 2008), https://www.nbcnews.com/id/wbna23601583 (citing a letter from the MOJ to the Department of

Justice on August 22, 2007 which provides that the "Ministry of Justice considers the American-born, U.S. citizen Peterson to also be a French national and that the extradition request has been denied"). Indeed, the Government is unaware of any instance in which France has ever extradited a French citizen to the United States. (*See* Ex. B at 4 ("[T]he principle of non-extradition of nationals is a principle of extradition law from which France has never deviated outside the framework of the European Union.")). Simply put, the Court was correct when it determined at the initial bail hearing that France does not appear to extradite its own citizens. (Tr. 83).

The defendant's supposed waiver of her extradition rights with respect to the United Kingdom should similarly be afforded no weight. Although an anticipatory waiver of extradition may be admissible in extradition proceedings in the United Kingdom, such a waiver is by no means binding, authoritative, or enforceable. *See United States v. Stanton*, No. 91 Cr. 889 (CHS), 1992 WL 27130, at *2 & n.1 (S.D.N.Y. Feb. 4, 1992) (denying modification of defendant's bail where defendant indicated willingness to waive extradition proceeding by providing extradition waivers, as British authorities advised that extradition waivers were possible only in cases where the fugitive actually appeared before a British magistrate after the filing of an extradition request, and concluding that such a waiver was not an "enforceable undertaking"). Under the United Kingdom's Extradition Act of 2003, consent to extradition is permitted, "if (and only if) [a person] has the assistance of counsel or a solicitor to represent him in the proceedings before the appropriate judge." Extradition Act 2003, § 127(9), https://www.legislation.gov.uk/ukpga/2003/41. As such, a judge in the United Kingdom must independently evaluate any waiver of extradition in real time, thereby necessarily rendering any anticipatory waiver executed before the defendant is found in the United Kingdom meaningless. *Id.* at §127. In other words, consent given

to authorities in the United States would not be binding in the United Kingdom, and the defendant could easily decide not to consent to extradition once found abroad.

Further, a judge in the United Kingdom must make an independent decision on extradition based on the circumstances at the time the defendant is before the court, including the passage of time, forum, and considerations of the individual's mental or physical condition. *See, e.g.*, *id.* at §§ 82, 83A, & 91. Even if a final order of extradition has been entered by a court, the Secretary of State still has the discretion to deny extradition. *See id.* at § 93. The Government understands from OIA that extradition from the United Kingdom is frequently extensively litigated, uncertain, and subject to multiple levels of appeal. Moreover, even where the process is ultimately successful, it is lengthy and time-consuming.

Ultimately, although the defendant purports to be willing to waive her right to challenge being extradited to the United States, she simply cannot do so under the laws of France and the United Kingdom, and she would be free to fight extradition once in those countries. And, of course, the defendant could choose to flee to another jurisdiction altogether, including one with which the United States does not have an extradition treaty. The defendant's written waivers of extradition from France and the United Kingdom certainly provide no guarantee that the defendant will not flee to a third country from which, even if she can be located, extradition may be impossible. Courts have recognized that lack of an effective means of extradition can increase a defendant's flight risk, and have cited such facts as a relevant consideration in detaining defendants pending trial. *See, e.g.*, *United States v. Namer*, 238 F.3d 425, 2000 WL 1872012, at *2 (6th Cir. Dec. 12, 2000); *Cilins*, 2013 WL 3802012 at *2; *United States v. Abdullahu*, 488 F. Supp. 2d 433, 443 (D.N.J. 2007) ("The inability to extradite defendant should he flee weighs in favor of detention."). Beyond being impossible to guarantee, extradition is typically a lengthy,

complicated, and expensive process, which would provide no measure of justice to the victims who would be forced to wait years for the defendant's return. The strong possibility that the defendant could successfully resist extradition only heightens the defendant's incentive to flee.

Second, the defendant's behavior in the year leading up to her arrest demonstrates her sophistication in hiding and her ability to avoid detection. The Court noted as much in denying bail, and the Renewed Bail Application also does nothing to change that conclusion. (Tr. 87). Indeed, the defendant's time in isolation in the year leading up to her arrest makes clear that, even to the extent she has loved ones and property in this country, she has proven her willingness to cut herself off entirely from them and her ability to live in hiding. She did so by purchasing a home using a trust in another name and introducing herself to the real estate agent under an alias, placing her assets into accounts held under other names, registering cellphones and at least one credit card under other names, and living in near total isolation away from her loved ones.

The Renewed Bail Application again tries to cast those steps as efforts to avoid the media frenzy that followed Epstein's death. (Tr. 44, 56-57). However, as the Court already recognized, regardless of the defendant's reasons for taking these steps, that course of conduct clearly establishes her expertise at remaining hidden and her willingness to cut herself off from her family and friends in order to avoid detection. (Tr. 87). Rare is the case when a defendant has already demonstrated an aptitude for assuming another identity and concealing her assets, including when purchasing property, registering cellphones, and managing finances. Here, the defendant has indisputably taken all of those steps. She was able to do so because of both her finances and her willingness to take extreme measures and to experience social isolation away from her loved ones. And she was so good at assuming another identity that she was able to avoid notice by locals and

the media even when a bounty was offered for her location and when numerous media outlets were searching for her.

The charts, graphs, and affidavits proffered by the defense do not undercut the defendant's skill at evading detection, and do nothing more than restate the justification for those actions that the defense already made at the prior hearing. (*See* Dkt. 18 at 14-16). That said, there is still reason to believe that the defendant was hiding not just from the press, but also from law enforcement. It is undisputed that defense counsel, even while in contact with the Government, never disclosed the defendant's location or offered her surrender if she were to be charged. (Tr. 53-54). The Court already inquired about defense counsel's interactions with the Government in the year leading up to the defendant's arrest, and the Renewed Bail Application offers nothing new on that score. (*Id.*). Defense counsel contacted the Government when the FBI attempted to serve the defendant with a subpoena, but were unable to locate her, on July 7, 2019. Prior to her arrest, the Government and defense counsel communicated on multiple occasions between July and October of 2019, and communicated briefly on two additional occasions, most recently in March of 2020. At no point did defense counsel disclose the defendant's location, offer to surrender the defendant, or offer to bring the defendant in to be interviewed.

Moreover it is undisputed that when the FBI located the defendant, she ignored their directives and ran away from the arresting agents. Although the defense has submitted an affidavit from the defendant's private security team, nothing in that affidavit should alter the Court's determination that detention is appropriate here. The defense already informed the Court at the July 14, 2020 bail hearing that the defendant's security protocol was to move to an inner room if her security was breached. (Tr. 55). Even still, the new affidavit makes clear that the agents who entered the defendant's property were wearing clothing that clearly identified them as FBI agents.

(Def. Ex. S ¶ 12). Moreover, the FBI announced themselves as federal agents to the defendant when they first approached her. Thus, even if the defendant was following her private security's protocol when she fled, she did so knowing that she was disobeying the directives of FBI agents, not members of the media or general public. Those actions raise the very real concern, particularly in light of the terms of her proposed package, that the defendant would prioritize the directives of her private security guards over the directives of federal law enforcement. Further, the act of wrapping a cellphone in tin foil has no conceivable relevance to concerns about the press. The defense argues that the defendant only took those measures because that particular phone number had been released to the public, but that just suggests the defendant believed that was the only number of which law enforcement was aware. In other words, there is still reason to believe, as the Court previously found, that in the year leading up to her arrest, the defendant sought to evade not only the press, but also law enforcement. (Tr. 87).

Third, the defendant has access to significant wealth. At the initial bail hearing, the Government expressed doubt that the defendant's assets were limited to the approximately $3.8 million she reported to Pretrial Services, and noted that it appeared the defendant was less than candid with Pretrial Services regarding the assets in her control. (Tr. 28-30, 72-73). The finances outlined in the defense submission confirm the Government's suspicion that the defendant has access to far more than $3.8 million, confirm that the defendant was less than candid with Pretrial Services (and, by extension, the Court) during her interview, and confirm that the defendant is a person of substantial means with vast resources.[5] The defendant's apparent willingness to deceive

[5] As noted above, the Court effectively assumed the defendant had considerably more assets than those disclosed to Pretrial Services in rejecting defense counsel's repeated offer to provide a more fulsome picture of the defendant's finances and concluding that even assuming the defense could provide a clearer description of the defendant's assets, detention was still warranted. (*See* Tr. 87).

this Court already weighed in favor of detention, and confirmation of that deception only reemphasizes that this defendant cannot be trusted to comply with bail conditions.

Now, the defense has submitted a financial report that reflects the defendant has approximately $22 million in assets—far more than the figure she initially reported to Pretrial Services. (Def. Ex. O). Accepting the financial report at face value, it is clear that the defense's proposed bail package would leave the defendant with substantial resources to flee the country. Not only would she have millions of dollars in unrestrained assets at her disposal,[6] but she would also have a $2 million townhouse in London, which she could live in or sell to support herself. In other words, even with the proposed bond—which is only partially secured—the defendant would still have millions of dollars at her disposal. She could absolutely afford to leave her friends and family to lose whatever they may pledge to support her bond, and then repay them much of their losses. In fact, the defendant could transfer money to her proposed co-signers immediately following her release,[7] given the large sums of money that would be left unrestrained by her proposed bail package.

Moreover, the schedule provided by the defense is notably silent regarding any *future* revenue streams to which the defendant may have access. The financial report only addresses the defendant's assets without detailing her income at all. The defendant has similarly provided the Court with no information about what resources her spouse might have access to on a prospective

[6] In particular, according to the report, the defendant would have more than $4 million in unrestrained funds in accounts, in addition to hundreds of thousands of dollars of jewelry and other items. Moreover, the Government presumes the defendant has not yet spent all $7 million of the retainer paid to her attorneys, which would still belong to the defendant if she fled.

[7] The Government notes that two of the defendant's proposed co-signers are citizens and residents of the United Kingdom, against whom the Government could not realistically recover a bond amount. These co-signers have not offered to secure this bond with any cash or property, and as a result, such a bond would effectively be worthless if the defendant were to flee.

basis, in addition to their substantial assets. The financial report submitted by the defense is also careful to note that it does not account for any possible income from inheritances. (Def. Ex. O at 5). [redacted].

The financial report further shows that the defendant apparently spent the last five years moving the majority of her assets out of her name by funneling them through trusts to her spouse. That pattern suggests the defendant has used the process of transferring assets as a means to hide her true wealth. As the Renewed Bail Application points out, the defendant currently has approximately $3.4 million worth of assets held in her own name, which is close to the amount of wealth she told Pretrial Services she possessed in July 2020. Importantly, though, that number omits the millions of dollars of assets that she has transferred from her name through trust accounts to her spouse, including funds that were used to purchase the New Hampshire property where the defendant was residing when she was arrested.[8] This confirms that the Government was right to be concerned that the defendant had refused to identify her spouse or his assets to Pretrial Services. That practice further demonstrates the defendant's sophistication in hiding her assets and maintaining assets that are under her control in other names.

In this vein, the financial report suggests that the defendant originally brought more than $20 million to her marriage, but that her husband brought only $200,000.[9] (*See* Def. Ex. O at 10).

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[8] On this score, it bears noting that that defendant told Pretrial Services that the property was owned by a corporation, and that she was "just able to stay there." (Pretrial Services Report at 2). The defendant's lack of candor does not inspire confidence that she can be trusted to comply with bail conditions.

[9] The Government has not been able to verify this financial information—in part because the defense has declined to provide the Government with the spouse's current banking information—but [redacted]

Setting aside whether the defendant's spouse has additional assets beyond those included in the financial report, the vast majority of the assets contained in the report itself apparently originated with the defendant. (*See* Def. Ex. O at 10). Based on the report, it seems clear that the defendant slowly funneled the majority of her wealth to trusts and into her husband's name over the last five years. As a result, if the Court were to grant the defendant's proposed bail package and the defendant were to flee, her spouse would primarily lose the money that the defendant gave him rather than his own independent assets. In other words, were the defendant to flee, she would largely be sacrificing her own money and assets, thereby limiting the moral suasion of her spouse co-signing the bond. In sum, the defendant's submission does not change the Government's position at the original bail hearing that the defendant has considerable financial resources, and could live a comfortable life as a fugitive.

The combination of all these factors, including the defendant's foreign ties, demonstrated ability to live in hiding, and financial resources, confirm that the defendant's characteristics continue to weigh in favor of detention. Given the multiplicity of factors supporting detention, this is not one of the rare cases in which a private security company could conceivably be considered as a bail condition. *See United States v. Boustani*, 932 F.3d 79, 82 (2d Cir. 2019). The Second Circuit has squarely held that "the Bail Reform Act does not permit a two-tiered bail system in which defendants of lesser means are detained pending trial while wealthy defendants are released to self-funded private jails," and that "a defendant may be released on such a condition

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[redacted] The Court need not resolve this question, however, because regardless of whether the defendant's husband may have additional undisclosed assets, as discussed herein, the key takeaway from the financial report is that the vast majority of the spouse's reported assets, upon which the proposed bond is based, originated with the defendant, meaning he would not be losing his own money if the defendant fled.

only where, *but for* his wealth, he would not have been detained." *Id.* Here, detention is warranted not only because of the defendant's financial means, but also her foreign ties, her skill at and willingness to live in hiding, the nature of the offense resulting in a presumption of detention, and the strength of the evidence, among other factors. The defense suggestion that the defendant's private security guards should post cash in support of a bond does not change this calculus. There is no reason to believe that the defendant would be at all troubled by a security company in which she has no personal stake losing $1 million, especially if that sacrifice meant she could escape conviction and sentencing. Accordingly, release to the equivalent of a "privately funded jail" is not warranted here. *Id.* at 83.

Relatedly, as the Court previously recognized (Tr. 87-88), a GPS monitoring bracelet offers little value for a defendant who poses such a significant flight risk because it is does nothing to prevent the defendant's flight once it has been removed. At best, home confinement and electronic monitoring would reduce a defendant's head start after cutting the bracelet. *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 (JG), 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 (JG), 2002 WL 31410262, at *3 (E.D.N.Y. Oct. 10, 2002) (same). Simply put, no bail conditions, including those proposed in the Renewed Bail Motion, would be sufficient to ensure that this defendant appears in court.

In urging a different conclusion, the defense again cites the same cases discussed in its initial briefing and at the July 14, 2020 hearing to argue that the proposed bail conditions are consistent with or exceed those approved by courts in this Circuit for "high-profile defendants with financial means and foreign citizenship." (Mot. at 34; *see* Dkt. 18 at 16, 21; Tr. 48-51). The Court should reject the defense's efforts to raise the same precedent that the Court already took into consideration when denying bail. "A motion for reconsideration may not be used . . . as a vehicle for relitigating issues already decided by the Court." *Jackson v. Goord*, 664 F. Supp. 2d 307, 313 (S.D.N.Y. 2009) (internal quotation marks omitted). The Court already considered and rejected the defendant's efforts to liken her case to other "serious and high-profile prosecutions where the courts, over the government's objection, granted bail to defendants with significant financial resources." (Tr. 88). Noting "crucial factual differences," the Court described those cases, including *United States v. Esposito*, 309 F. Supp. 3d 24 (S.D.N.Y. 2018), *United States v. Dreier*, 596 F. Supp. 2d 831 (S.D.N.Y. 2009), and *United States v. Madoff,* 586 F. Supp. 2d 240 (S.D.N.Y. 2009), as "not on point and not persuasive," and distinguished the defendant for a number of reasons, including the defendant's "significant foreign connections." (Tr. 88; *see id.* (distinguishing *Esposito* where the risk of flight appeared to "have been based on the resources available to defendant, not foreign connections or experience and a record of hiding from being found"); *id.* (distinguishing *Madoff* where "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 already engaged in a fact-specific analysis in ordering the defendant detained. Among the reasons provided, the Court found that the "the defendant not only has significant financial resources, but has demonstrated sophistication in hiding those resources and herself."

(Tr. 87). Following the analysis the Court has already conducted, several of the cases cited by the defendant are readily distinguishable. *See, e.g.*, *United States v. Khashoggi*, 717 F. Supp. 1048, 1050-52 (S.D.N.Y. 1989) (in ordering defendant released pending trial, noting, among other things, that the defendant not only waived his right to appeal extradition in Switzerland, but that he traveled immediately to the United States for arraignment, and that his country's Government committed to ensuring his appearance at trial); *United States v. Bodmer*, No. 03 Cr. 947 (SAS), 2004 WL 169790, at *1, *3 (S.D.N.Y. June 28, 2004) (setting conditions of bail where defendant arrested abroad had already consented to extradition to the United States and finding that the Government—whose argument was "based, in large part, on speculation" as to the defendant's financial resources—had "failed to meet its burden"). And there is support in the case law for detaining individuals in comparable situations to the defendant. *See, e.g.*, *United States v. Boustani*, 356 F. Supp. 3d 246, 252-55 (E.D.N.Y.), *aff'd*, No. 19-344, 2019 WL 2070656 (2d Cir. Mar. 7, 2019) (ordering defendant detained pending trial and finding that defendant posed a risk of flight based on several factors, including seriousness of the charged offenses, lengthy possible sentence, strength of Government's evidence, access to substantial financial resources, frequent international travel, "minimal" ties to the United States, and "extensive ties to foreign countries without extradition"); *United States v. Patrick Ho*, 17 Cr. 779 (KBF), Dkt. 49 (S.D.N.Y. Feb. 4, 2018) (ordering defendant detained based on defendant's risk of flight and citing the strength of the Government's evidence, lack of meaningful community ties, and "potential ties in foreign jurisdictions"); *United States v. Epstein*, 155 F. Supp. 2d 323, 324-326 (E.D. Pa. 2001) (finding that defendant's dual citizenship in Germany and Brazil, lucrative employment and property interests, and lack of an extradition treaty with Brazil weighed in favor of detention despite the fact that defendant and his wife owned "substantial" property and other significant assets in the

United States). Further, unlike those cases and the cases cited by the defendant, the crimes charged here involving minor victims trigger a statutory presumption in favor of detention, weighing further in favor of detention. *See Mercedes*, 254 F.3d at 436.

"Each bail package in each case is considered and evaluated on its individual merits by the Court." *Epstein*, 425 F. Supp. 3d at 326. Unlike the cases cited by the defense, the Government seeks detention not solely on the basis that the defendant is of financial means and has foreign citizenship. Rather, detention is warranted because the defendant is a citizen of multiple foreign countries, including one that does not extradite its nationals, with "substantial international ties," "familial and personal connections abroad," and "substantial financial resources," (Tr. 83-84), with a demonstrated sophistication in hiding herself and her assets, who, for the myriad reasons discussed herein and identified at the original hearing—including the seriousness of the offense, the strength of the Government's evidence, and the potential length of sentence—presents a substantial flight risk. (Tr. 82-91). The defendant continues to pose an extreme risk of flight, and the defense has not offered any new information sufficient to justify reversal of the Court's prior finding that no combination of conditions could ensure her appearance.

D. Conditions of Confinement

Finally, the Renewed Bail Application reiterates the same argument about the potential harms of detention on the defendant that this Court rejected at the initial bail hearing. (Tr. 42, 68-69). As was the case in July, these complaints do not warrant the defendant's release.

The defendant continues to have more time than any other inmate at the MDC to review her discovery and as much, if not more, time to communicate with her attorneys. Specifically, the defendant currently has thirteen hours per day, seven days per week to review electronic discovery. Also during that time, the defendant has access to email with defense counsel, calls with defense

counsel, and when visiting is available depending on pandemic-related conditions, the defendant has access to legal visits. Due to the recently implemented lockdown at the MDC, visitation is not currently available, but MDC legal counsel is arranging for the defendant to receive a VTC call with legal counsel three hours per day every weekday, starting this Friday. Defense counsel will also be able to schedule legal calls on weekends as needed. Given those facts, the defense argument essentially suggests that no defendant could prepare for trial while housed at the MDC—a patently incorrect claim.

The defendant is able to review her discovery using hard drives provided by the Government, discs that defense counsel can send containing any copies of discovery material defense counsel chooses within the confines of the protective order, or hard copy documents provided by defense counsel. The Government has taken multiple steps to address technical difficulties the defendant has encountered when reviewing her hard drives. These steps included modifying and reproducing productions in new formats, asking MDC IT staff to assist the defendant in viewing her hard drives on the MDC computer, and then purchasing and providing a laptop for the defendant's exclusive use.[10] Even when the defendant was temporarily unable to review some files from some hard drives, she was always able to review other portions of her discovery.

[10] The Government understands from MDC legal counsel that the defendant has access to the laptop thirteen hours per day during weekdays and has access to the MDC desktop computer thirteen hours per day seven days per week. The use of the laptop is limited to weekdays because the MDC restricts the number of employees who carry the key to the secure location where the laptop is kept, and the employees with that key do not work regularly on weekends. The MDC previously accommodated an exception to this rule while the defendant was in quarantine and arranged for her to use the laptop in her isolation cell on weekends because otherwise she would not have had access to a computer during weekends while in quarantine. Now that she is out of quarantine, the defendant will have access to the MDC desktop computer on weekends.

As to the defense's most recent complaints, the malfunctioning of the sixth production that the defense complains of resulted from the defendant herself dropping the hard drive onto the ground, and that drive has been replaced. When the defense informed the Government that the drive containing the seventh production may be malfunctioning, the Government offered to have IT staff review the drive. In response, the defense indicated the drive was in fact still viewable and declined to have IT staff review it. Accordingly, it is the Government's understanding that the defendant currently has a full, readable set of discovery at the MDC. At the defense's request, the Government is preparing yet another copy containing all productions to date on a single drive so that the defendant will have a backup copy of discovery materials at the MDC.[11] Throughout the defendant's pretrial detention, the Government has been responsive to the defense's concerns regarding access to discovery and counsel. The Government will continue to work with MDC legal counsel to ensure that the defendant is able to review her discovery and to communicate with defense counsel over the seven months still remaining before trial.

As to the defense complaints regarding the defendant's conditions of confinement, the defense notably does not suggest that the defendant should be housed in general population. Indeed, the defense appears to agree that the best way to ensure the defendant's safety while detained is to be away from general population. Unlike other inmates in protective custody, however, the defendant is released from her isolation cell for thirteen hours per day, has her own shower, has exclusive use of two different computers, has her own phone to use, and has her own television. Those conditions set her far apart from general population inmates, not to mention

[11] On this score, the Government notes the tension between the defense claim that the discovery produced to date contains little of value or relevant to the charges set forth in the Indictment, and the simultaneous claim that the defendant has been prejudiced by technical difficulties that have temporarily delayed her ability to review portions of those productions, productions which, according to the defense, counsel have already been able to conclude are essentially unimportant.

other inmates in protective custody. Additionally, psychology and medical staff check on the defendant daily, MDC legal staff are highly attuned to any complaints the defendant has raised, and following initial complaints about the defendant's diet early in her incarceration, the MDC has ensured that the defendant receives three full meals per day and has access to commissary from which she can supplement her diet.

The MDC has taken numerous steps to strike the balance between the security of the institution and providing the defendant with adequate time and resources to prepare her defense. In that vein, many of the searches the defendant complains of—such as searches after every visit, searches of her cell, pat downs when she is moved, and directing her to open her mouth for visual inspection (while the searching staff member is wearing a mask)—are the same searches to which every other inmate is subjected for the security of the institution. MDC legal counsel has assured the Government that MDC staff does not record or listen to the substance of the defendant's calls and visits with legal counsel. To the extent MDC staff conducts additional searches or monitoring of the defendant, MDC legal counsel has indicated that those steps are necessary to maintain the security of the institution and the defendant.

With respect to the defense concerns regarding COVID-19, the Government recognizes, as it did in its initial bail briefing, that the virus presents a challenge at any jail facility. At least for this defendant, the MDC's precautionary measures appear to have worked. When the defendant was potentially exposed to the virus, she was placed in quarantine, remained asymptomatic, tested negative, and then was released from quarantine. As the Court found at the initial bail hearing, the defendant has no underlying health conditions that would place her at greater risk of complications from COVID-19. (Tr. 89). For that same reason, the Court should again reject the suggestion that the pandemic warrants the defendant's release.

CONCLUSION

As this Court previously found, the defendant "poses a substantial actual risk of flight." (Tr. 86). Nothing in the defense submission justifies altering the Court's prior conclusion that there are no conditions of bail that would assure the defendant's presence in court proceedings in this case. Accordingly, the Renewed Bail Motion should be denied.

Dated: New York, New York
December 16, 2020

Respectfully submitted,

[redacted]
Acting United States Attorney

By: 
[redacted]
Assistant United States Attorneys
[redacted]

BSF | BOIES SCHILLER FLEXNER

Sigrid S. McCawley
Telephone: [redacted]
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December 15, 2020

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

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

Dear Judge Nathan:

[redacted] submits the following statement in opposition to the Defendant's renewed motion for bail.

***

I appreciate the opportunity to again be heard by the Court in this matter and once more request that Ghislaine Maxwell not be released prior to her trial. I write this not only on behalf of myself, but all of the other girls and young women who were victimized by Maxwell. Ghislaine Maxwell sexually abused me as a child and the government has the responsibility to make sure that she stands trial for her crimes. I do not believe that will happen or that any of the women she exploited will see justice if she is released on bail. She has lived a life of privilege, abusing her position of power to live beyond the rules. Fleeing the country in order to escape once more would fit with her long history of anti-social behavior.

Drawing on my personal experience with Maxwell and what I have learned of how she has lived since that time, I believe that she is a psychopath. Her abuse of me and many other children and young women is evidence of her disregard for and violation of the rights of others. She has demonstrated a complete failure to accept to responsibility in any way for her actions and demonstrated a complete lack of remorse for her central role in procuring girls for Epstein to abuse. She was both charming and manipulative with me during the grooming process, consistent with what many of the women she abused have described. She has frequently lied to others, including repeatedly lying about me and my family. Maxwell has for decades lived a parasitic lifestyle relying on Epstein and others to fund her lavish existence.

Maxwell has repeatedly demonstrated that her primary concern is her own welfare, and that she is willing to harm others if it benefits her. She is quite capable of doing so once more. She will not hesitate to leave the country irrespective of whether others will be on the hook financially for her actions because she lacks empathy, and therefore simply does not care about hurting others. She would in fact be highly motivated to flee in order to reduce the possibility of continued imprisonment, the conditions of which she has continuously complained. Her actions over the last several years and choice to live in isolation for long periods suggest that being comfortable is more

important to her than being connected. Even more concerning, is if she is let out she has the ability to once again abuse children and the painful consequences of that type of trauma can last a lifetime. I implore the Court to make sure that Ghislaine Maxwell does not escape justice by keeping her incarcerated until her trial.

***

Respectfully submitted,

/s/ Sigrid S. McCawley

Sigrid S. McCawley, Esq.

MINISTÈRE
DE LA JUSTICE
Liberté
Égalité
Fraternité

Direction des affaires criminelles et des grâces

Sous-direction de la justice pénale spécialisée
Bureau de l'entraide pénale internationale

Paris, le 11 décembre 2020

Monsieur le garde des Sceaux, ministre de la Justice

à

Department of Justice (D.O.J)

Par l'intermédiaire d'Andrew FINKELMAN, magistrat de liaison
Ambassade des Etats-Unis d'Amérique à Paris

J'ai l'honneur de vous informer de ce que l'article 696-2 du code de procédure pénale français prévoit que la France peut extrader *« toute personne n'ayant pas la nationalité française »*, étant précisé que la nationalité s'apprécie au jour de la commission des faits pour lesquels l'extradition est demandée (article 696-4 1°).

Le code de procédure pénale français proscrit donc de manière absolue l'extradition l'extradition d'une personne qui avait la nationalité française au moment de la commission des faits pour lesquels l'extradition est demandée.

La loi pénale étant d'interprétation stricte, il n'y a pas lieu de discriminer entre les nationaux et les binationaux. A partir du moment où elle était française au moment des faits, la personne réclamée est inextradable, peu importe qu'elle soit titulaire d'une ou de plusieurs autres nationalités.

Lorsque le refus d'extrader est fondé sur la nationalité de la personne réclamée, la France applique le principe « aut tradere, aut judicare » selon lequel l'Etat qui refuse la remise doit juger la personne. Ainsi, l'article 113-6 du code pénal donne compétence aux juridictions françaises pour juger des faits commis à l'étranger par un auteur de nationalité française.

Certains Etats, en général de droit anglo-saxon, acceptent d'extrader leurs nationaux et n'ont en revanche pas compétence pour juger les faits commis par leurs ressortissants sur un territoire étranger. C'est notamment le cas des Etats-Unis d'Amérique.

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L'article 3 du Traité bilatéral d'extradition signé le 23 avril 1996 entre les Etats-Unis d'Amérique et la France stipule que *« l'Etat requis n'est pas tenu d'accorder l'extradition de l'un de ses ressortissants, mais le Pouvoir exécutif des Etats-Unis a la faculté de le faire, discrétionnairement, s'il le juge approprié »*.

En application de ce Traité et du principe général de non-extradition des nationaux en droit français, la France refuse systématiquement d'accorder l'extradition de ressortissants français aux autorités judiciaires américaines tandis que les autorités américaines acceptent régulièrement d'extrader leurs ressortissants vers la France.

Il convient de faire observer que le principe de non-extradition des nationaux vaut non seulement à l'égard des Etats-Unis mais également de tous les autres Etats à l'exception des Etats-membres de l'Union européenne, aux termes de la loi du 9 mars 2004 transposant la décision-cadre du 13 juin 2002 sur le mandat d'arrêt européen qui prévoit que la remise de la personne réclamée ne pourra pas être refusée au seul motif de sa nationalité française.

Ce tempérament au principe de non-extradition des nationaux s'inscrit dans le contexte particulier de la construction de l'espace judiciaire européen qui s'inscrit lui-même dans un processus d'intégration politique très spécifique entre les Etats-membres de l'Union européenne. Ce haut niveau d'intégration politique existant entre les Etats membres de l'Union européenne va de pair avec une certaine homogénéité, au sein de ces Etats, en matière d'échelle des peines ainsi qu'en ce qui concerne les modalités d'aménagement de peine, les Etats membres étant liés par les mêmes obligations internationales (notamment les obligations découlant de la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et de la jurisprudence de la Cour européenne des droits de l'homme).

En tout état de cause, le principe de non-extradition des nationaux est un principe du droit de l'extradition auquel la France n'a jamais dérogé en dehors du cadre de l'Union européenne.

Le Chef du Bureau de l'Entraide Pénale Intenationale

Philippe JAEGLÉ

[logo]
MINISTRY
OF JUSTICE
Liberty
Equality
Fraternity

Directorate of Criminal Affairs and Pardons

Specialized Criminal Justice Sub-Directorate
Office for the International Mutual Assistance in Criminal Matters

Paris, December 11, 2020

Mr. Keeper of the Seals, Minister of Justice

to

Department of Justice (DOJ)

Through Andrew FINKELMAN, Liaison Magistrate
Embassy of the United States of America in Paris

I have the honor to inform you that Article 696-2 of the French Code of Criminal Procedure provides that France can extradite "any person not having French nationality," it being specified that nationality is assessed on the day of the commission of the acts for which extradition is requested (Article 696-4 1°).

The French Code of Criminal Procedure therefore absolutely prohibits the extradition of a person who had French nationality at the time of the commission of the acts for which extradition is requested.

The penal law being of strict interpretation, there is no reason to discriminate between nationals and binationals. From the moment they were French at the time of the facts, the person claimed is inextradible, regardless of whether they hold one or more nationalities.

When the refusal to extradite is based on the nationality of the requested person, France applies the principle "*aut tradere, aut judicar*" according to which the State which refuses the surrender must judge the person. Thus, Article 113-6 of the Penal Code gives competence to the French courts to judge acts committed abroad by a person of French nationality.

Some countries, generally under Anglo-Saxon law, agree to extradite their nationals and, at the same time, have no jurisdiction to judge acts committed by their nationals on foreign territory. This is particularly the case of the United States of America.

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Article 3 of the Bilateral Extradition Treaty signed on April 23, 1996 between the United States of America and France stipulates that "The requested State is not bound to grant the extradition of any of its nationals, but the Executive Power of the United States has the right to do so at its discretion if it deems it appropriate."

In application of this Treaty and of the general principle of non-extradition of nationals under French law, France systematically refuses to grant the extradition of French nationals to the American judicial authorities, while the American authorities regularly agree to extradite their nationals to France.

It should be noted that the principle of non-extradition of nationals applies not only to the United States but also to all other States except the Member States of the European Union under the terms of the Law of March 9, 2004 transposing the framework decision of June 13, 2002 on the European arrest warrant, which provides that the surrender of the requested person may not be refused on the sole ground of his French nationality.

This principle of non-extradition of nationals fits into the context of the construction of the European judicial area which itself is part of a very specific process of political integration between the Member States of the European Union. This high level of political integration existing between the Member States of the European Union goes hand in hand with a certain homogeneity within these States in terms of the scale of penalties as well as in terms of adjustment of penalty methods; the member states being bound by the same international obligations (in particular the obligations arising from the European Convention for the Protection of Human Rights and Fundamental Freedoms and from the case law of the European Court of Human Rights).

In any event, the principle of non-extradition of nationals is a principle of extradition law from which France has never deviated outside the framework of the European Union.

Office for the International Mutual Assistance in Criminal Matters

Philippe JAEGLÉ
[signature]

Exhibit G

Doc. 103
Reply 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)

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

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PRELIMINARY STATEMENT

The only issue before the Court is whether conditions exist that can reasonably assure Ms. Maxwell's appearance during this case. On this renewed application, Ms. Maxwell has put before the Court a significant bail package, supported by detailed submissions, which warrant her release on strict conditions. She and her spouse have committed to signing a bond in the full amount of their net worth, regardless of the ownership of the underlying assets. She has proffered seven additional sureties, consisting of her family and close friends, many of whom are U.S. citizens and long-time residents, who have come forward at great personal risk and have pledged meaningful assets. The government does not challenge the good faith and bona fides of these proposed sureties. She has provided a detailed report from a respected accounting firm, which was further reviewed by a former IRS special agent, setting forth a statement of her financial condition, supported by voluminous documentation. The government does not challenge the report's findings, nor its underlying documentation. She has agreed, in writing, to give up any right she has or could have to contest extradition and submit to all other standard travel restrictions. And she has noted that a key representation made by the government at the initial bail hearing as to the strength of its evidence is simply not accurate – [redacted] and there is no "significant contemporaneous documentary evidence" that corroborates its case.

With regard to any other defendant, this record would readily support release on strict bail conditions, perhaps even on consent. But this is Ghislaine Maxwell, the apparent substitute for Jeffrey Epstein. So, instead, in its response the government urges the Court to disregard the significant additional evidence proffered to the Court and further argues that a defendant cannot be eligible for bail (apparently on any conditions), unless she can provide an absolute guarantee against all risks. But this is not the legal standard. *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."). Under, the Bail Reform Act, a defendant must be released unless there are "no conditions" that would reasonably assure her presence. Here, the proposed package satisfies the actual governing standard, and the Court should grant bail.

ARGUMENT

I. The Government Concedes that Its Case Relies Almost Exclusively on the Testimony of Three Witnesses

In evaluating the strength of the government's case in its prior ruling, the Court relied on the government's proffer that the testimony of the three accusers would be corroborated by "*significant* contemporaneous documentary evidence." (Tr. 82 (emphasis added)). The government now expressly retreats from this position. It is abundantly clear from the government's response that it has no "significant contemporaneous documentary evidence"—in fact, it has virtually no documentary corroboration at all—and that its case against Ms. Maxwell is based almost exclusively on the recollections of the three accusers, who remain unidentified, concerning events that took place over 25 years ago. Moreover, the government offers no specificity about when within the four-year period of the charged conspiracy the alleged incidents of abuse took place. This, alone, is grounds for the Court to reconsider its prior ruling.

The few examples of documentary corroboration referenced by the government—which are the same examples that the government touted at the initial bail hearing—pertain to Epstein, not Ms. Maxwell. The government concedes that [redacted] (Gov. Mem. at 11 (emphasis added)). The government further states that [redacted] (*Id.* (emphasis added)). The strength of the government's case against Jeffrey Epstein is not at issue

here. Whether or not the accusers' recollections as to Epstein are corroborated is irrelevant to the strength of the evidence against Ms. Maxwell.

The only purported corroboration that pertains in any way to Ms. Maxwell is of marginal value. The government references [redacted] (*Id.* at 11). But even the government concedes that, at best, [redacted][1]

It is clear that the only evidence that Ms. Maxwell allegedly "groomed" the accusers or knowingly facilitated or participated in Epstein's sexual abuse of minors will come solely from the testimony of the three accusers. The government's case against Ms. Maxwell therefore rests entirely on the credibility and reliability of these three witnesses.[2] Moreover, the substantive counts (Counts Two and Four) are based on the testimony of only *one* witness, Minor Victim-1. It is also telling that the government does not even attempt to rebut the defense's assertion that it did not begin issuing subpoenas for documents related to Ms. Maxwell until just after the death of Jeffrey Epstein. This confirms that the case against Ms. Maxwell was assembled after the fact

[1] The government also proffers that they will have "additional witnesses." (Gov. Mem. at 11). But these are not "outcry" witnesses who will corroborate a contemporaneous account of abuse from one or more of the accusers. Instead, they will testify only that "both [Ms. Maxwell] and Epstein knew and interacted with certain minor victims when those victims were minors." (*Id.*). Again, the fact that Ms. Maxwell may have "met and interacted with" someone when they were a minor proves absolutely nothing.

[2] One of the witnesses has submitted a letter to the Court. While the CVRA permits the right to be heard, the letter should be given no legal weight in the Court's bail analysis. *See United States v. Turner*, 367 F. Supp. 2d 319, 331-32 (E.D.N.Y. 2005)

as a substitute for its prosecution of Epstein.[3] The government's case is not what it represented to the Court at the initial bail hearing, which should weigh heavily in favor of granting bail.[4]

II. The Government Has Not Carried Its Burden

A. The Government Asks the Court to Ignore Ms. Maxwell's Substantial Ties to the United States, Including Her Spouse [redacted]

The government incorrectly argues that the renewed bail application offers no new information and that the Court was "already aware of" the defendant's friends and family in the United States. (Gov. Mem. at 13). The government ignores that, since the initial bail hearing, Ms. Maxwell's spouse has come forward as a co-signor and has submitted a detailed letter describing his committed relationship with Ms. Maxwell for over four years and the important role she has played, and continues to play, [redacted] It also ignores that several of Ms. Maxwell's closest friends and family, many of whom are U.S. citizens and residents, have also come forward, at considerable personal risk, to support her bond with pledges of assets or letters of support. This information, which was not available to the Court at the time of the initial hearing, demonstrates Ms. Maxwell's strong ties to this country and weighs heavily in favor of bail.

Rather than address the merits, the government attempts to dismiss the significance of Ms. Maxwell's relationship with her spouse, noting that Ms. Maxwell told Pretrial Services that she was in the process of getting a divorce and that her spouse did not step forward as a co-signer at the initial bail hearing. (*Id.* at 13-14). The government is entirely

[3] Moreover, the government failure to request [redacted] regardless of whether it was legally obligated to do so, shows that the government has accepted the accusers' accounts without serious scrutiny. Given the government's ongoing *Brady* obligations, it is unsettling that the government would simply accept [redacted]

[4] Contrary to the government's assertion, the defense has not abandoned our legal challenges to the indictment. (Gov. Mem. at 10 n.1). We believe we have strong arguments that have only gotten stronger with the production of discovery. We will be making those arguments to the Court in our pretrial motions to be filed next month.

mistaken. Prior to her arrest, Ms. Maxwell and her spouse had discussed the idea of getting a divorce as an additional way to create distance between Ms. Maxwell and her spouse to protect him [redacted] from the terrible consequences of being associated with her. Nevertheless, in the weeks following the initial bail hearing, [redacted] She and her spouse therefore had no reason to continue discussing divorce, which neither of them wanted in the first place. Nor was there any reason for her spouse to refrain from stepping forward as a co-signer. In sum, the government has offered nothing but unsupported innuendo to suggest that Ms. Maxwell's relationship with her spouse [redacted] is not a powerful tie to this country.

The government's assertion that Ms. Maxwell must not have a close relationship with [redacted] is particularly callous and belied by the facts. (Gov. Mem. at 14). As her spouse explains, [redacted] (Ex. A ¶ 12). [redacted]

B. Ms. Maxwell Has Thoroughly Disclosed Her Finances and Pledged All of Her and Her Spouse's Assets in Support of Her Bond

The government's attempts to rebut the financial condition report are unavailing. Significantly, the government does not contest the accuracy of the report, nor the voluminous supporting documentation. In fact, the government has proffered nothing that calls into question the report's detailed account of Ms. Maxwell and her spouse's assets for the last five years, which addresses one of the Court's principal reasons for denying bail.

Rather than question the report itself, the government attempts to argue that Ms. Maxwell deceived the Court and Pretrial Services about her assets. (Gov. Mem. at 22-23).

The report shows nothing of the sort. Ms. Maxwell, who was sitting in a jail cell at the time, was asked by Pretrial Services to estimate her assets. Accordingly, she gave her best estimate of the assets she held in her own name, which the government concedes she did with remarkable accuracy considering that she had not reviewed her financial statements.[5]

The government's arguments further confirm that it has lost all objectivity and will view at any fact involving Ms. Maxwell in the worst possible light. For example, the government asserts that Ms. Maxwell has demonstrated "sophistication in hiding her assets" and characterizes her transfers to a trust as "funneling" assets to her spouse to "hide her true wealth." (*Id.* at 24). There is nothing unusual, let alone nefarious or even particularly sophisticated about transferring assets into a trust or a spouse. Indeed, Ms. Maxwell fully disclosed these transactions on her joint tax returns. More importantly, all of the assets disclosed in the financial report, whether they are owned by Ms. Maxwell or her spouse, are included in the bond amount and are subject to forfeiture if she flees.

The government further argues that the financial condition report shows that Ms. Maxwell has access to millions of dollars of "unrestrained funds" that she could use to flee the country and reimburse any of her sureties for the loss of their security. (*Id.* at 23). That characterization is simply untrue. First, as disclosed in the financial report, Ms. Maxwell has procured significant loans on the basis of a negative pledge over her London property. Second, the $4 million controlled by her spouse [redacted] could only be liquidated with considerable difficulty.

The government also faults Ms. Maxwell for not including a valuation of future contingent assets and income that may never materialize. (*Id.* at 23-24). For example, [redacted]

[5] Moreover, for the reasons discussed in our initial memorandum, Ms. Maxwell was reluctant to discuss anything about her spouse and clearly expressed her reluctance to Pretrial Services early on in the interview.

[redacted] Similarly, the financial report does not include a future income stream for Ms. Maxwell or her spouse because it presents only historical and current assets. Even so, Ms. Maxwell has no certain future income stream. Her spouse [redacted] and has had to liquidate his existing investments to help Ms. Maxwell. Finally, the reference to [redacted] is gratuitous. Ms. Maxwell had no knowledge of [redacted]

But the larger point is this: Ms. Maxwell has proposed a substantial bail package with multiple co-signers and significant security. She and her spouse have pledged all of their assets in support of the bond. Ms. Maxwell's wealth is not a reason to deny her bail. It is a reason to set appropriately strict conditions that will result in significant financial consequences to Ms. Maxwell and her friends and family if she leaves the country. The proposed bail package does exactly that.[6]

C. The Government's Assertion that Ms. Maxwell Is "Adept" at Hiding and Therefore a Flight Risk Is Specious

The government continues to assert the sinister narrative that Ms. Maxwell had "an expertise at remaining hidden," and that it would therefore be easy for her to become a fugitive.

[6] The government's argument that her spouse's moral suasion is diminished because Ms. Maxwell brought the majority of assets to the relationship is nonsensical. (*Id.* at 24-25). Regardless of whose money it was to begin with, all of the assets of Ms. Maxwell and her spouse will be forfeited if she flees and her spouse [redacted] will be left with nothing. Furthermore, the government's assertion that they could not verify the spouse's financial information because Ms. Maxwell did not provide his current banking information is false. (*Id.* at 24 n.9). The defense provided the spouse's current banking records and only redacted the name of the bank.

(Gov. Mem. at 20). The government suggests that purchasing a home using a trust and providing a pseudonym to a real estate broker are indicative of her willingness and ability to live in hiding and somehow forecast Ms. Maxwell's intention to flee. (*Id.*). These arguments are just further evidence that the government will frame every fact about Ms. Maxwell in the worst possible light. As the defense has already argued extensively in its initial brief, these steps were borne out of necessity to protect Ms. Maxwell and her family from harassment and physical threats. Moreover, they are not predictive of flight. There is simply no basis to conclude, based on the measures that Ms. Maxwell was forced to take to protect herself and her family, that she would then willingly abandon that family to become a fugitive from justice. To the contrary, she remained in the country precisely to remain close to them and to defend her case.

D. Refusal of Extradition from France or the United Kingdom Is Highly Unlikely

The government dismisses Ms. Maxwell's willingness to waive her extradition rights as to France and the United Kingdom as "meaningless" because Ms. Maxwell cannot guarantee with absolute certainty that either country will enforce the waiver. (Gov. Mem. at 14). The government misses the point: Ms. Maxwell's willingness to do everything she can to eliminate her ability to refuse extradition to the fullest extent possible demonstrates her firm commitment to remain in this country to face the charges against her and, as Ms. Maxwell's French and U.K. experts confirm, there is every reason to believe that both authorities would consider the waiver as part of any extradition request.

In an attempt to counter William Julié's expert report stating it is "highly unlikely" that the French government would refuse to extradite Ms. Maxwell (Def. Mem., Ex. V at 2), the government attaches a letter from the French Ministry of Justice ("MOJ") that references neither Mr. Julié's report nor Ms. Maxwell, but states generally that the French Code of Criminal Procedure "absolutely prohibits" the extradition of a French national. (Gov. Mem., Ex. B). But

as Mr. Julié's accompanying rebuttal report explains (*see* Ex. A), the MOJ letter ignores that the extradition provisions in French Code of Criminal Procedure apply *only in the absence of an international agreement providing otherwise*. (*Id.* at 1). This rule is necessitated by the French Constitution, which requires that international agreements prevail over national legislation. (*Id.*). Thus, extradition of a French national to the United States is legally permissible if the extradition treaty between the United States and France provides for it—which it does. (*Id.* at 3).

The government's reliance on a 2006 case—in which France refused to extradite a French national who was also a U.S. citizen—provides no precedent as to how a French court would rule on an extradition request regarding Ms. Maxwell because, as Mr. Julié notes, the United States did not challenge the refusal in the French courts. (*Id.* at 2-3). Nor does it undermine Mr. Julié's opinion that, in the unusual circumstance where a citizen of both countries has executed an extradition waiver and then fled to France in violation of bail conditions set by a U.S. court, it is "highly unlikely" that an extradition decree would not be issued. (*Id.* at 3).

The government offers no rebuttal to the opinion of Ms. Maxwell's U.K. extradition expert, David Perry. Nor does it dispute Mr. Perry's opinion that Ms. Maxwell would be "highly unlikely" to successfully resist extradition from the United Kingdom, that her waiver would be admissible in any extradition proceeding, and that—contrary to the government's representation at the initial bail hearing (Tr. 27)—bail would be "extremely unlikely." (*See* Def. Mem. Ex. U at ¶ 39). Mr. Perry's addendum opinion (attached as Ex. B) reiterates these points, opining that the waiver would be "a highly relevant factor" in the U.K. proceeding, both to the likelihood of extradition and to the likelihood of bail while the proceeding is pending. (*Id.* ¶ 3).[7]

[7] Nor, as the government suggests, does the Secretary of State have general "discretion to deny extradition" after a court has entered a final extradition order. (*See* Gov. Mem. at 19). That discretion is limited to a handful of exceptional circumstances that would likely be inapplicable to Ms. Maxwell's case. (*Id.* ¶¶ 4-5).

Finally, the government's argument that Ms. Maxwell could always flee to some country *other* than the United Kingdom and France holds her—and any defendant—to an impossible standard, which is not the standard under the Bail Reform Act. (*See* Gov. Mem. at 19). By the government's reasoning, *no* defendant with financial means to travel could be granted bail, because there would always be a possibility that they could flee to another country (even if they had no ties there), and there could never be an assurance that any extradition waiver would be enforced. However, "Section 3142 does not seek ironclad guarantees." *United States v. Chen,* 820 F. Supp. 1205, 1208 (N.D. Cal. 1992). To the extent that Ms. Maxwell's ties to France and the United Kingdom—where she has not lived for nearly 30 years—create a flight risk, her extradition waivers along with the substantial bail package proposed reasonably cure it.[8]

E. The Recent COVID Surge at MDC Further Justifies Bail

The government suggests that the Court ignore COVID concerns because Ms. Maxwell, though quarantined because of contact with an officer who tested positive, did not become infected. This ignores the daily (sometimes multiple) inspections of Ms. Maxwell's mouth, which heightens her risk of contracting the deadly virus, which has now surged to 113 positive cases in the MDC. Further, Deputy Captain B. Houtz recently issued a memo stating that "[i]t has not been determined whether legal calls and legal visits will continue." As the Court is well aware, legal visits with Ms. Maxwell already have been suspended. Should legal calls also be discontinued, her constitutional right to effective assistance of counsel will be further eroded.

CONCLUSION

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

[8] Any incentive Ms. Maxwell might have to flee to France has been greatly diminished by the recent arrest in France of Jean-Luc Brunel, who reportedly is under investigation for alleged sexual assaults by Jeffrey Epstein. *See, e.g., France Details Modeling Agent in Jeffrey Epstein Inquiry,* https://www.theguardian.com/world/2020/dec/17/france-detains-modelling-agent-jean-luc-brunel-in-jeffrey-epstein-inquiry.

Dated: December 18, 2020

Respectfully submitted,

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Exhibit A

WILLIAM JULIÉ
AVOCAT À LA COUR

December 18, 2020, Paris.

Response to the government's memorandum in opposition to the defendant's renewed motion for release.

I was asked to review the United States government's memorandum and notably pages 15 to 17 alongside the French Minister of Justice's letter dated 11 December 2020 produced as Exhibit B to this memorandum.

1 The French Minister of Justice's letter (Exhibit B)

The letter of the French Minister of Justice, on which the US government relies to argue that the French government does not extradite its citizens outside the European Union and thus to the United States, quotes Article 696-2 of the French Code of Criminal Procedure, which provides that France can extradite "*any person not having French nationality*".

It remains unclear whether the author of such letter had actually access to my opinion which is not even quoted, and more generally it seems the letter responds to a question which unexpectedly was not disclosed.

The letter fails to mention, however, that Article 696 of the same Code provides that provisions of the French Code of Criminal Procedure on the conditions of extradition **apply in the absence of an international agreement providing otherwise** (Article 696 of the French Code of Criminal Procedure: "*In the absence of an international agreement stipulating otherwise, the conditions, procedure and effects of extradition shall be determined by the provisions of this chapter*[1]*. These provisions shall also apply to matters which would not have been regulated by international conventions*"). The provisions of Article 696 of the French Code of Criminal Procedure are a reminder that under Article 55 of the French Constitution, international agreements prevail over national legislation (Article 55 of the French Constitution: "*Treaties or agreements that have been duly ratified or approved have, upon their publication, an authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party*"). It follows from these provisions that the key question is whether France may extradite a French national under the Extradition Treaty between the USA and France and/or under the Extradition Treaty between the European Union and the USA, not whether France extradites its citizens under French legislation.

In accordance with this French constitutional rule, the administrative circular of 11 March 2004, published by the French Ministry of Justice, which aims at specifying how the then recently amended legal provisions regarding extradition should apply and be understood, states the following: "*Article 696 of the Code of Criminal Procedure reaffirms this principle of*

[1] The relevant chapter includes Articles 696-1 to Article 696-47-1 of the French Code of Criminal Procedure, and thus includes Article 696-2.

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subsidiarity of domestic law in relation to international instruments as stated by the aforementioned law of 10 March 1927: the legislative provisions on extradition are applicable only in the silence or in the absence of international conventions."[2]

It follows from the provisions of Article 696 of the French Code of Criminal Procedure that the key question is whether France may extradite a French national under the Extradition Treaty between the USA and France and/or under the Extradition Treaty between the European Union and the USA, not whether France may extradite its citizens under French legislation.

As previously outlined, the Extradition Treaty between the USA and France does not preclude the French government from extraditing a French national and must therefore be distinguished from a number of other international agreements signed by France which contain a clear prohibition to that extent. The Treaty between the USA and France gives the French government discretion as to whether or not to extradite its own citizens to the USA.

It is noted that the letter of the French Minister does not provide any answer on this issue.

2 The DOJ Memorandum and the Peterson Case

In support of its argument that the French government would not extradite Ms Ghislaine Maxwell to the USA, the government relies on the case of Mr Hans Peterson, a dual French American citizen whose extradition to the US was denied by France in 2007.

The Peterson precedent should only be cited with great caution. First, I am not aware that this case has given rise to a published judicial decision, therefore it should not be interpreted as the support of any legal rule or principle. In addition, in regards to the documents that the DOJ has referred to in its memorandum, I doubt that a judicial decision has ever occurred in this case: as mentioned by the 2007 letter of US Senators Richard J. Durbin and Barack Obama to the French Minister of Foreign Affairs, the French Minister of Justice communicated its decision refusing extradition on August 22nd 2007, only a few days after the suspect was arrested (at the beginning of August 2007). This decision is not a Court decision but a discretionary decision from the French Ministry of Justice. It actually seems very unlikely that a court decision could have been rendered in this timeframe. This indicates that the case must not have been handed on to the court by the Ministry of Justice in the earliest stage of the extradition process.

A refusal to extradite may possibly be challenged by the requesting government before the French *Conseil d'Etat*, which is the French Supreme Court for administrative matters, as for example the United Kingdom and Hong Kong successfully challenged a decision from the French authorities not to extradite an individual whose extradition they had requested (*Conseil d'Etat, 15 October1993, no. 142578).* In the Peterson case, the American government did not

[2] Circulaire Mandat d'arrêt européen et Extradition n° CRIM-04-2/CAB-11.03.2004 du 11 mars 2004

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challenge the refusal before French courts, while such challenge could have led to a judicial review of the request, in accordance with the ordinary extradition procedure.

Secondly, in the absence of a published judicial decision, it is impossible to determine what the outcome of this case would have been if it had come before the courts.

Third, as was rightly pointed out by US Senators Richard J. Durbin and Barack Obama in their aforementioned letter to the French Minister of Foreign Affairs, which the government cites in its memorandum:

> *"Article 3 of the Extradition Treaty between the United States and France provides in pertinent part that "There is no obligation upon the Requested State to grant the extradition of a person who is a national of the Requested State". While this Article does not require the extradition of a national to a requesting state, it also does not appear to preclude extradition.* ***To the extent there is discretion available in such extradition decisions, we urge the French government to exercise that discretion in favor of extradition****".*

I am satisfied that this is the right interpretation of Article 3, as this is exactly the conclusion I came to in my first report. To the extent that there is a discretion, there can be no absolute rule against the extradition of nationals under French law. A discretionary power is not a legal rule. Indeed, there is no constitutional principle against the extradition of nationals. For these reasons, the Peterson case does not alter my view that under the specific and unique facts of this case, it is highly unlikely that the French government would refuse to issue and execute an extradition decree against Ms. Maxwell, particularly if Ms. Maxwell has signed an irrevocable waiver in the USA.

Finally, if an extradition request were to be issued against a French citizen today, the obligations of the French government under the Extradition Treaty between the USA and France would also need to be read in light of the Agreement on extradition between the European Union and the United States of America, which came into force on February 1st, 2010, several years after the Peterson case. Article 1 of this Agreement, which enhances cooperation between Contracting Parties, provides that: "*The Contracting Parties undertake, in accordance with the provisions of this Agreement, to provide for enhancements to cooperation in the context of applicable extradition relations between the Member States and the United States of America governing extradition of offenders*". The existence of this Agreement would need to be taken into account by the French government in the exercise of its discretion as to whether or not to grant the extradition of a French national to the USA.

William JULIE

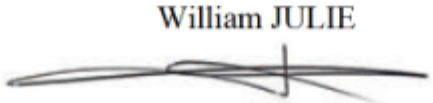

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Exhibit B

IN THE MATTER OF AN OPINION
ON THE EXTRADITION LAW OF ENGLAND AND WALES

RE GHISLAINE MAXWELL

ADDENDUM OPINION

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1. This Addendum Opinion is provided in response to the Government's Memorandum in Opposition to the Defendant's Renewed Motion to Release dated 16 December 2020, insofar as it pertains to matters of English extradition law and practice.

2. The primary conclusions of the Opinion dated 8 October 2020 ('the Opinion') remain unchanged, namely: (a) in the majority of cases, proceedings in England and Wales in relation to US extradition requests are concluded in under two years; (b) it is virtually certain that bail would be refused in an extradition case in circumstances where the requested person had absconded from criminal proceedings in the United States prior to trial and in breach of bail; and (c) on the basis of the information currently known, it is highly unlikely[1] that Ghislaine Maxwell would be able successfully to resist extradition to the United States in relation to the charges in the superseding indictment dated 7 July 2020. In addition to those conclusions, the following three points may be made.

3. **First**, as noted in the Opinion[2], Ms Maxwell's waiver of extradition would be admissible in any extradition proceedings in England and Wales. While such a document cannot compel a requested person to consent to their extradition once in the United Kingdom, the document would be a highly relevant factor in any contested extradition proceedings. In particular:

   (a) If Ms Maxwell were to rely on such a waiver to secure bail in the United States and then, having absconded, renege on the undertakings in that

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[1] The Government observes, at p.16 of the Motion, that this leaves open a *"possibility"* that extradition could be resisted. Absolute certainty in any legal context is rare but the practical effect of the conclusion in the Opinion is that, at this stage and on the basis of the information currently known, it is difficult to conceive of circumstances in which Ms Maxwell could successfully resist extradition, and her extradition would be a virtual foregone conclusion.

[2] Opinion, para. 39.

document to seek to resist her extradition, bail would almost certainly be refused for the duration of the extradition proceedings.

(b) The majority of the bars that might be relied upon by Ms Maxwell[3] require the extradition judge to make a finding that extradition would be oppressive. Quite apart from the other factors rendering those bars unavailable to Ms Maxwell, as set out in the Opinion, it is difficult to conceive of circumstances in which a finding of oppression could be made in relation to the serious charges faced by Ms Maxwell in circumstances where she had absconded from the United States and was contesting her extradition in breach of good faith undertakings relied upon to secure her bail. Similar considerations apply to the balancing exercise required in assessing whether extradition would breach the right to family life under Article 8 of the ECHR. The remaining bars to extradition and human rights bars are unlikely to be available to Ms Maxwell for the reasons given in the Opinion[4].

(c) A breach of the undertakings in the waiver of extradition would be highly likely to be viewed as a sign of bad faith and cause the extradition judge to treat any evidence given by Ms Maxwell with scepticism.

4. **Second**, it is not correct that section 93 of the Extradition Act 2003 ('the 2003 Act') confers a general discretion on the Secretary of State to refuse extradition if a case is sent to her by the extradition judge[5]. The ambit of the power in section 93 is described at paragraph 8 of the Opinion. The Secretary of State may only refuse extradition on the grounds provided for in that section, namely: (a) if an applicable bar to extradition[6] is found to exist; (b) the Secretary of State is informed that the request has been withdrawn[7]; (c) there is a competing claim for extradition from

[3] Opinion, para. 26. Those bars are passage of time; forum; and mental and physical condition.

[4] Opinion, paras. 27-29 and 36-37.

[5] As appears to be submitted by the Government at p.19 of the Memorandum.

[6] The bars to extradition that the Secretary of State must consider are: (a) the death penalty (s. 94); (b) speciality (s. 95); (c) earlier extradition to the United Kingdom from another territory (s. 96); and (d) earlier transfer to the United Kingdom from the International Criminal Court (s. 96A).

[7] Extradition Act 2003, s. 93(4)(a).

another state[8]; (d) the person has been granted asylum or humanitarian protection in the United Kingdom[9]; or (e) extradition would be against the interests of UK national security[10]. On the information currently known, none of these bars or exceptions would arise in the case of Ms Maxwell.

5. The exceptional nature of the Secretary of State's power is illustrated by the fact that it has been exercised in the favour of a requested person on only one occasion since the enactment of the 2003 Act, and that that single exercise of the power was based on grounds on which reliance may not now be placed.[11]

6. **Third**, as to the timescales of extradition proceedings arising from requests for extradition made by the Government of the United States, it is to be noted that the purpose of the 2003 Act to streamline extradition procedures[12] and, in practice, the legislation works to facilitate extradition. As noted in the Opinion[13] the majority of extradition cases conclude within two years, or three months in cases where consent to extradition is given.

David Perry QC
6KBW College Hill

17 December 2020

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[8] Extradition Act 2003, ss. 93(4)(b), 126(2) and 179(2).
[9] Extradition Act 2003, s. 93(4)(c) and (6A).

[10] Extradition Act 2003, s. 208.

[11] *viz.* in the case of Gary McKinnon, whose extradition was refused by the Secretary of State in 2012 on the basis that he was seriously mentally ill and that there was a high risk of suicide were he to be extradited; since that decision, the Secretary of State has been barred from refusing extradition on the basis of human rights grounds: Extradition Act 2003, s. 70(11) (as inserted by the Crime and Courts Act 2013 with effect from 29 July 2013).

[12] *Welsh v United States* [2007] 1 WLR 156 (Admin) para. 26.

[13] Opinion, para. 13.

Exhibit H

Doc. 106
Opinion & Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

v

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

OPINION AND ORDER

ALISON J. NATHAN, District Judge:

Defendant Ghislaine Maxwell has been indicted by a grand jury on charges of conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371; enticing a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2; conspiracy to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371; transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. §§ 2423 and 2; and two charges of perjury, in violation of 18 U.S.C. § 1623. The Court held a lengthy bail hearing on July 14, 2020. After extensive briefing and argument at the hearing, the Court concluded that the Defendant was a clear risk of flight and that no conditions or combination of conditions would ensure her appearance. Bail was therefore denied.

The Defendant has now filed a renewed motion for release on bail pending trial, which the Government opposes. In her renewed motion, the Defendant attempts to respond to the reasons that the Court provided in denying bail and proposes a substantially larger bail package. But by and large, the arguments presented either were made at the initial bail hearing or could have been made then. In any event, the new information provided in the renewed application only solidifies the Court's view that the Defendant plainly poses a risk of flight and that no

combination of conditions can ensure her appearance. This is so because: the charges, which carry a presumption of detention, are serious and carry lengthy terms of imprisonment if convicted; the evidence proffered by the Government, including multiple corroborating and corroborated witnesses, is strong; the Defendant has substantial resources and foreign ties (including citizenship in a country that does not extradite its citizens); and the Defendant, who lived in hiding and apart from the family to whom she now asserts important ties, has not been fully candid about her financial situation. Thus, for substantially the same reasons that the Court denied the Defendant's first motion for release on July 14, 2020, the Court DENIES the Defendant's renewed motion for release on bail.[1]

I. Background

On June 29, 2020, a grand jury in the Southern District of New York returned a six-count Indictment against the Defendant, charging her with facilitating Jeffrey Epstein's sexual abuse of multiple minor victims between approximately 1994 and 1997. *See* Dkt. No. 1. On July 2, 2020, the Indictment was unsealed, and that same day, the Defendant was arrested in New Hampshire. On July 8, 2020, the Government filed a Superseding Indictment, which contained only small ministerial corrections. Dkt. No. 17.

On July 14, 2020, this Court held a hearing regarding the Defendant's request for bail. After a thorough consideration of all of the Defendant's arguments and of the factors set forth in 18 U.S.C. § 3142(g), the Court concluded that no conditions or combination of conditions could reasonably assure the Defendant's appearance, determining as a result that the Defendant was a flight risk and that detention without bail was warranted under 18 U.S.C. § 3142(e)(1). The

[1] This Opinion & Order will be temporarily sealed in order to allow the parties to propose redactions to sensitive or confidential information.

Defendant did not appeal the Court's determination that detention was required, and she has been incarcerated at the Metropolitan Detention Center since that time.

II. Legal Standard

Pretrial detainees have a right to bail under the Eighth Amendment to the United States Constitution, which prohibits the imposition of "[e]xcessive bail," and under the Bail Reform Act, 18 U.S.C. § 3141, *et seq.* The Bail Reform Act requires the Court to release a defendant "subject to the least restrictive further condition, or combination of conditions, that [it] determines will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(c)(1)(B). Only if, after considering the factors set forth in 18 U.S.C. § 3142(g), the Court concludes 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," may the Court order that the defendant be held without bail. 18 U.S.C. § 3142(e)(1).

If there is probable cause to find that the defendant committed an offense specifically enumerated in § 3142(e)(3), a rebuttable presumption arises "that no condition or combination of conditions will reasonably assure" the defendant's appearance or the safety of the community or others. 18 U.S.C. § 3142(e)(3). In such circumstances, "the defendant 'bears a limited burden of production . . . to rebut that presumption by coming forward with evidence that he does not pose a danger to the community or a risk of flight.'" *United States v. English*, 629 F.3d 311, 319 (2d Cir. 2011) (quoting *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001)); *see also United States v. Rodriguez*, 950 F.2d 85, 88 (2d Cir. 1991) ("[A] defendant must introduce some evidence contrary to the presumed fact in order to rebut the presumption."). Nonetheless, "'the government retains the ultimate burden of persuasion by clear and convincing evidence that the

defendant presents a danger to the community,' and 'by the lesser standard of a preponderance of the evidence that the defendant presents a risk of flight.'" *English*, 629 F.3d at 319 (quoting *Mercedes*, 254 F.3d at 436); *see also United States v. Martir*, 782 F.2d 1141, 1144 (2d Cir. 1986) ("The government retains the burden of persuasion [in a presumption case]."). Even when "a defendant has met his burden of production," however, "the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court." *United States v. Mattis*, 963 F.3d 285, 290 91 (2d Cir. 2020).

After a court has made an initial determination that no conditions of release can reasonably assure the appearance of the Defendant as required, the Court may reopen the bail hearing if "information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue" of whether pretrial detention is warranted. 18 U.S.C. § 3142(f). But the Court is not required to reopen the hearing or to conduct another hearing if it determines that any new information would not have a material bearing on the issue. *See United States v. Raniere*, No. 18-CR-2041 (NGG) (VMS), 2018 WL 6344202, at *2 n.7 (E.D.N.Y. Dec. 5, 2018) (noting that "[a]s the court has already held one detention hearing, it need not hold another" the standards set forth in 18 U.S.C. § 3142(f)(2) are met); *United States v. Havens*, 487 F. Supp. 2d 335, 339 (W.D.N.Y. 2007) (electing not to reopen a detention hearing because the new information would not have changed the court's decision to detain the defendant until trial).

III. Discussion

The Defendant bases her renewed motion for bail on both 18 U.S.C. § 3142(f) and the Court's inherent powers to review its own bail decisions. *See* Def. Mot. at 7 9. As already noted, § 3142(f) provides that 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." A court may also revisit its own decision pursuant to its inherent authority, even where the circumstances do not match § 3142(f)'s statutory text. *See, e.g.*, *United States v. Rowe,* No. 02-CR-756 (LMM), 2003 WL 21196846, at *1 (S.D.N.Y. May 21, 2003) (noting that "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. Petrov,* No. 15-CR-66 (LTS), 2015 WL 11022886, at *3 (S.D.N.Y. Mar. 26, 2015) (noting the "Court's inherent authority for reconsideration of the Court's previous bail decision").

In line with this, the Defendant's new motion aims to address the reasons that the Court provided when it originally determined that no conditions could reasonably assure her appearance and that pretrial detention was warranted. First, the Defendant proposes a more expansive set of bail conditions that she claims addresses any concerns regarding risk of flight. The newly proposed conditions include a $28.5 million bail package, which consists of a $22.5 million personal recognizance bond co-signed by the Defendant and her spouse and secured by approximately $8 million in property and $500,000 in cash, along with six additional bonds—five co-signed by the Defendant's friends and family members and the sixth posted by the security company that would provide security services to the Defendant if she were granted bail and transferred to home confinement. *See* Def. Mot. at 2. The proposed conditions also provide that the Defendant would be released to the custody of a family member, who would serve as her third-party custodian under 18 U.S.C. § 3142(c)(1)(B)(i); that she would be placed in home confinement with GPS monitoring and that her travel would be restricted to the Southern and Eastern Districts of New York and would be limited to appearances in Court, meetings with

counsel, medical visits, and upon approval by the Court or Pretrial Services. *Id.* at 2 3. Furthermore, the Defendant would have on-premises security guards that she would pay for who would prevent her from leaving the residence at any time without prior approval by the Court or Pretrial Services and who would escort her when she is authorized to leave. *Id.* at 3.

The motion also presents new information that, according to the Defendant, addresses the concerns that the Court articulated when it determined that detention was warranted. This newly presented information, most of which was available to the Defendant at the time of the initial bail hearing, includes evidence of the Defendant's family ties in the United States, *see* Def. Mot. at 10 14; a detailed financial report that provides a more comprehensive outlook on the Defendant's financial conditions and assets, *see id.* at 15–18; evidence that according to her rebuts the Government's original contention that she attempted to evade law enforcement prior to her arrest, *see id.* at 18–25; waivers of her right to contest extradition from the United Kingdom and France, along with expert opinions claiming that the Defendant would not be able to resist extradition if she were to execute the waivers, *see id.* at 25–29; and evidence that she argues lays bare the weakness of the Government's case against her, *see id.* at 30–34.

Finally, the Defendant argues that the conditions of her confinement, including as a result of the COVID-19 pandemic, present an additional factor favoring release. She claims that the conditions imposed are punitive and that those conditions interfere with her ability to participate in her defense, and she asserts that these factors further militate in favor of release. *See id.* at 34 38.

Having carefully considered all of the Defendant's arguments, the Court again concludes that no conditions or combination of conditions could reasonably assure her appearance and that

detention without bail is warranted under 18 U.S.C. § 3142(e)(1). The Court accordingly denies Defendant's request to reopen the original bail hearing and denies her renewed motion for bail.

A. The presumption in favor of detention applies

The Court is required to presume that no condition or combination of conditions of pretrial release will reasonably assure the Defendant's appearance. The Bail Reform Act provides that if a defendant is charged with committing an offense involving a minor victim under 18 U.S.C. §§ 2422 or 2423, "it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed." 18 U.S.C. § 3142(e)(3)(E). The Defendant's indictment by a grand jury suffices to establish that there is probable cause to believe that she committed the offenses charged in the indictment. *See, e.g.*, *United States v. Contreras*, 776 F.2d 51, 53–54 (2d Cir. 1985) (noting that that an indictment returned by a properly constituted grand jury "conclusively determines the existence of probable cause" and that "the return of an indictment eliminates the need for a preliminary examination at which a probable cause finding is made by a judicial officer pursuant to Rule 5(c) of the Federal Rules of Criminal Procedure." (citations omitted)). In light of the crimes charged in the indictment, the Court begins with the presumption that no condition or combination of conditions of pretrial release will reasonably assure the Defendant's appearance.

When the presumption applies, the Defendant bears a limited burden of production "tending to counter the § 3142(e) presumption of flight," *Contreras*, 776 F.2d at 53 n.1. The Defendant's burden of production only requires that she "introduce a certain amount of evidence contrary to the presumed fact." *United States v. Jessup*, 757 F.2d 378, 380 (1st Cir. 1985),

abrogated on other grounds by United States v. O'Brien, 895 F.2d 810 (1st Cir. 1990). That burden is "limited." *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001). The Defendant's proffer of evidence and information including information relating to her financial conditions and her family ties to the United States, among other things—satisfies this limited burden. As the Court discussed at the July 14, 2020 hearing, these factors bear on the question of whether the Defendant poses a flight risk. And the evidence she advances in her renewed motion for bail reasonably disputes the presumption that she poses a flight risk. In that sense, this evidence is relevant to the ultimate determination and satisfies the relatively low threshold imposed by the burden of production.

The presumption of flight does not disappear entirely, however, and it "remains a factor to be considered among those weighed by the district court." *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001) (quoting *Martir,* 782 F.2d at 1144). As a result, "[a] judicial officer conducting a detention hearing should, even after a defendant has come forward with rebuttal evidence, continue to give the presumption of flight some weight by keeping in mind that Congress has found that these offenders pose special risks of flight, and that 'a strong probability arises' that no form of conditional release will be adequate to secure their appearance." *Martir*, 782 F.2d at 1144 (citation omitted).

B. The new information does not alter the Court's initial determination

When determining whether there are conditions of release that will reasonably assure the appearance of the person as required, courts are required to consider the factors outlined in 18 U.S.C. § 3142(g). Thus, the Court considers (1) the nature and circumstances of the offense charged, including whether the offense involves a minor victim, (2) the weight of the evidence, (3) the defendant's history and characteristics, and (4) the nature and seriousness of the danger to

any person or the community posed by pre-trial release. *See Mercedes*, 254 F.3d at 436; *see also* 18 U.S.C. § 3142(g).

At the July 14, 2020 bail hearing, the Court considered these factors before concluding that no conditions of release could reasonably assure the appearance of the person as required. And the first and fourth factors remain unchanged. As already noted, the Defendant is charged with offenses involving minor victims, and it is undisputed that the nature and circumstances of the offenses charged in the Superseding Indictment weighs in favor of continued detention. On the other hand, the Government has not advanced any evidence that the Defendant poses a danger to any person or to the community, a factor that weighs against detention. The Defendant's arguments therefore focus on the second and third factors.

As explained below, neither the arguments put forth in the Defendant's renewed motion for bail nor the evidence she submitted in conjunction with her motion rebut the Court's conclusions, and the Court continues to find, after again applying these factors, that no conditions of release will reasonably assure the Defendant's appearance at future proceedings.

1. The Weight of the Evidence

The Court will address the strength of the Government's case first. The Defendant argues that the Government lacks any meaningful documentary corroboration of the witness testimony and that the discovery produced to date has included only a "small number of documents from the time period of the conspiracy." Def. Mot. at 5. And she claims, as a result, that the Government overstated the strength of its case in advance of the July 14, 2020 bail hearing. *See id.* at 30 33. So she argues that the second § 3142(g) factor supports release.

The Court disagrees. Arguing that the case against her "is based almost exclusively on the recollections of the three accusers, who remain unidentified," the Defendant contends that the

weight of the evidence is weak. Def. Reply at 2. But she too easily discredits the witness testimony. According to the Government, and as reflected in the indictment, it is anticipated that the three witnesses will provide detailed and corroborating accounts of the Defendant's alleged role in enticing minors to engage in sex acts. *See* Gov't Opp'n at 10; *see also* Dkt. No. 17, S1 Superseding Indictment, ¶¶ 7, 11, 13, 17. Moreover, the Government proffers that additional evidence, including flight records and other witnesses' corroborating testimony, will further support the main witnesses' testimony and link the Defendant to Epstein's conduct. Gov't Opp'n at 10–11. And while the Defendant contends that much of this evidence focuses on Epstein, not the Defendant, the nature of the conspiracy charge (along with the evidence linking the Defendant to Epstein) renders this evidence relevant to the Government's charges against her. As the Court stated in the July 14, 2020 hearing, although the Court does not prejudge the merits of the Government's case or of the Defendant's defenses, for purposes of the bail determination stage, the Government's proffered case against the Defendant remains strong. *See* Dkt. No. 93 ("Tr.") at 83:4–83:10. The Court again concludes that the Defendant's awareness of the potential strength of the government's case against her creates a risk of flight, and none of the Defendant's new arguments meaningfully alter that conclusion. As a result, the second factor supports detention.

2. The Defendant's History and Characteristics

At the July 14, 2020 bail hearing, the Court determined that the Defendant was a flight risk in part because of her substantial international ties, including multiple foreign citizenships and familial and personal connections abroad and her ownership of at least one foreign property of significant value. *See* Tr. at 83:13–83:18. And the Court further noted that the Defendant's extraordinary financial resources could provide her the means to flee the country even despite

COVID-19 related travel restrictions. *Id.* at 83:21 83:25. The Court also observed that the Defendant had family and personal connections to the United States but concluded that the absence of any dependents, significant family ties, or employment in the United States also supported the conclusion that flight would not pose an insurmountable burden for her. *Id.* at 84:4 84:9. While the Defendant's renewed motion for bail addresses some of these factors, it does not alter the Court's conclusion.

The first few considerations remain relatively unchanged. The Defendant continues to have substantial international ties and multiple foreign citizenships, and she continues to have familial and personal connections abroad. None of the evidence presented in support of the present motion fundamentally alters those conclusions. To address the Court's concern that the Defendant's French citizenship presented the opportunity that she could flee to France and that she would be able to resist extradition on that basis, *see* Tr. at 83:18–83:20, the Defendant now offers to waive her right to extradition from both the United Kingdom and France, along with expert opinions reports claiming that such waivers would likely make it possible to resist an extradition request from the United States to either country. *See* Def. Mot., Exs. T, U, V. As the Government points out in its brief, however, the legal weight of the waivers is, at best, contested. The French Ministry of Justice, for instance, indicated in a letter submitted in conjunction to the Government's opposition that the French Code of Criminal Procedure "absolutely prohibits" the extradition of a French national. *See* Gov't Opp'n, Ex. B. And while the Defendant's own expert attempts to rebut the Ministry of Justice's letter, *see* Def. Reply, Ex. A, even the Defendant's own experts use probabilistic, rather than absolute, language, leaving open the possibility that extradition would be blocked. *See, e.g.*, Def. Mot., Ex. U at 2 ("On the basis of the information currently known, it is highly unlikely that Ghislaine Maxwell would be able

successfully to resist extradition to the United States in relation to the charges in the superseding indictment dated 7 July 2020."); Def. Mot., Ex. V ¶ 76 ("It would . . . become a matter for the French government to decide on whether or not to issue an extradition decree against Ms. Ghislaine Maxwell."); *id.* ¶ 77 ("[I]t is highly unlikely that the French government would refuse to issue and execute an extradition decree against Ms Maxwell. . . ."). Nor has the Defendant presented any cases where courts addressed the question of whether an anticipatory waiver of extradition is enforceable; while she cites cases where defendants offered to waive extradition, the reasoning in those cases turned on other factors and the courts did not dwell on the enforceability of such waivers. *See, e.g.*, *United States v. Cirillo,* No. 99-1514, 1999 WL 1456536, at *2 (3d Cir. July 13, 1999); *United States v. Salvagno,* 314 F. Supp. 2d 115, 119 (N.D.N.Y. 2004); *United States v. Karni,* 298 F. Supp. 2d 129, 132 33 (D.D.C. 2004); *United States v. Chen,* 820 F. Supp. 1205, 1212 (N.D. Cal. 1992). In those cases, the courts included such waivers as one among several conditions of release, but they did not make any express determination that such waivers are enforceable. On the other hand, some courts have expressly opined that such waivers are *un*enforceable. *See, e.g.*, *United States v. Epstein*, 425 F. Supp. 3d 306, 325 (S.D.N.Y. 2019) (describing the "Defense proposal to give advance consent to extradition and waiver of extradition rights" as "an empty gesture."); *United States v. Morrison*, No. 16-MR-118, 2016 WL 7421924, at *4 (W.D.N.Y. Dec. 23, 2016) ("Although the defendants have signed a waiver of extradition, such a waiver may not become valid until an extradition request is pending in Canada and may be subject to withdrawal."); *United States v. Stroh*, No. 396-CR-139 (AHN), 2000 WL 1832956, at *5 (D. Conn. Nov. 3, 2000) ("[I]t appears that there is a substantial legal question as to whether any country to which he fled would enforce any waiver of extradition signed under the circumstances presented in this case. At any event,

extradition from Israel (or any other country) would be, at best, a difficult and lengthy process and, at worst, impossible.").

Having carefully reviewed the experts' reports and the cases cited by the Defendant,[2] the Court's analysis of the relationship between the Defendant's French citizenship and the risk of flight remains fundamentally unchanged. Its reasoning is guided in part by the substantial legal questions regarding the legal weight of anticipatory extradition waivers and the likelihood that any extradition would be a difficult and lengthy process (including, for instance, the likelihood that the Defendant would contest the validity of those waivers and the duration it would take to resolve those legal disputes). The likelihood that the Defendant would be able to *frustrate* any extradition requests—even if she were correct that she would be unable to stop extradition entirely weighs strongly in favor of detention.

In addition, the Defendant's extraordinary financial resources also continue to provide her the means to flee the country and to do so undetected. To be sure, this factor alone does not by itself justify continued detention. But as the Court noted at the initial bail hearing, the Defendant's financial resources, in combination with her substantial international ties and foreign connections and her experience avoiding detection (whether from the government, the press, or otherwise), do bear significantly on the flight risk analysis. *See* Tr. at 88:6 88:23 (distinguishing this case from *United States v. Esposito*, 309 F. Supp. 3d 24 (S.D.N.Y. 2018),

[2] The Defendant also argues that "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." Def. Mot. at 27 (citing *United States v. Khashoggi,* 717 F. Supp. 1048, 1052 (S.D.N.Y. 1989)). The Court places little weight on this argument. Under the Defendant's theory, a defendant could strategically offer to waive the right to extradition while intending to resist any subsequent extradition that might result. The Court is unpersuaded.

United States v. Dreier, 596 F. Supp. 2d 831 (S.D.N.Y. 2009), and *United States v. Madoff*, 586 F. Supp. 2d 240 (S.D.N.Y. 2009)).

The Court's concerns regarding the absence of any dependents, significant family ties, or employment in the United States, meanwhile, apply with somewhat less force in light of the evidence submitted in support of this motion. *See id.* at 84:4 84:9. The Defendant has submitted a litany of letters of support written by friends and family members. *See* Def. Mot., Exs. A N, W X. These letters, according to the Defendant, support her claim that she has significant ties to the United States and attest to the Defendant's character. The Defendant places particular emphasis on the letter written by her spouse, whose identity and connection to the Defendant was withheld from the Court at the initial bail hearing. *See* Def. Mot. at 11–13. In that letter, her spouse expounds on the lives they led before her arrest, noting in particular that the Government's characterization of the Defendant's "transient" lifestyle, Dkt. No. 4 at 9, was belied by the "quiet family life" that they had enjoyed. Def. Mot. at 11; *see also* Def. Mot, Ex. A ¶¶ 4–5. Other letters similarly highlight that the Defendant's family and affective ties in the United States are stronger than was originally presented to the Court in the initial bail hearing.

These letters substantiate the Defendant's claim that she has important ties to people in the United States, but they leave unaltered the Court's conclusion that flight would not pose an insurmountable burden for the Defendant. Among other things, the Defendant now argues that her newly revealed relationship with her spouse signals her deep affective ties in the country, but at the time she was arrested, she was not living with him and claimed to be getting divorced. *See* Pretrial Services Report at 3. Indeed, she does not propose to live with him were she to be released on bail, undercutting her argument that that relationship would create an insurmountable burden to her fleeing. Furthermore, the fact that she has friends and family in the United States

does not mean that those people would be unable to visit her were she to flee to another country. In addition, the Defendant continues to lack any employment ties to the United States—another factor weighing in favor of detention. Furthermore, it is apparent from the letters that the Defendant has significant ties to family and friends abroad. In light of this, nothing in the renewed motion for bail alters the Court's fundamental conclusion that flight would not pose an insurmountable burden to the Defendant.

Other factors that similarly speak to the Defendant's history and characteristics weigh in favor of detention. Most notably, the Defendant's pattern of providing incomplete or erroneous information to the Court or to Pretrial Services bears significantly on the Court's application of the third factor to the present case. Among other things, in July 2020 the Defendant represented to Pretrial Services that she possessed around $3.5 million worth of assets (while leaving out her spouse's assets and assets that had been transferred to trust accounts) and the representation that the New Hampshire property was owned by a corporation and that she was "just able to stay there." *See* Pretrial Services Report at 2. The Defendant now claims that she "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, [the financial 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. . . . For the reasons already discussed, Ms. Maxwell was reluctant to discuss anything about her [spouse] and expressed that to Pretrial Services." Def. Mot. at 16 n.5. Even if the Defendant was unable to provide an exact number, however, the difference between the number she originally reported to Pretrial Services and the number now presented to the Court in the Macalvins report, a report on the Defendant's finances prepared by a prominent accounting firm for purposes of this motion, *see* Def. Mot., Ex. O, makes it unlikely that the misrepresentation

was the result of the Defendant's misestimation rather than misdirection. And while the Defendant's concerns regarding her spouse's privacy are not insignificant, she fails to furnish any explanation as to why those concerns led her to misrepresent key facts to Pretrial Services and, by extension, the Court. In sum, the evidence of a lack of candor is, if anything, stronger now than in July 2020, as it is clear to the Court that the Defendant's representations to Pretrial Services were woefully incomplete. That lack of candor raises significant concerns as to whether the Court has now been provided a full and accurate picture of her finances and as to the Defendant's willingness to abide by any set of conditions of release.

For the reasons stated above, the Court concludes that the third factor continues to weigh in favor of detention.

C. Pretrial detention continues to be warranted

In light of the reasons stated above, the Government has again met its burden of persuasion by "a preponderance of the evidence that the defendant presents a risk of flight." *English*, 629 F.3d at 319 (quoting *Mercedes*, 254 F.3d at 436). Taking the § 3142(g) factors into account, the Court concludes that the presumption in favor of detention, the nature and characteristics of the charged offenses, the weight of the evidence, and the history and characteristics of the Defendant all weigh in favor of detention. Along similar lines, the Government has also shown, and the Court concludes for the reasons outlined below, that the Defendant's proposed bail package cannot reasonably assure her appearance. Thus, the Court's original conclusion that the Defendant poses a flight risk and that no set of conditions can reasonably assure her future appearance remains unaltered.

As already noted, the Defendant now proposes a $28.5 million bail package, which includes a $22.5 million personal recognizance bond co-signed by the Defendant and her spouse

and secured by approximately $8 million in property and $500,000 in cash, along with six additional bonds—five co-signed by the Defendant's friends and family members and the sixth posted by the security company that would provide security services to the Defendant if she were granted bail and transferred to home confinement. *See* Def. Mot. at 2. At the initial hearing, the Court noted that the opaqueness of the Defendant's finances rendered it difficult to set financial bail conditions that could reasonably assure her appearance in court. The financial information that the Defendant presented to the Court at the initial bail hearing was undisputedly incomplete, and as the Court noted, the Court lacked "a clear picture of Ms. Maxwell's finances and the resources available to her." Tr. at 86 87.

The Defendant has now presented to the Court what is perhaps a more thorough report on her finances prepared by Macalvins, an accounting firm in the United Kingdom. Macalvins analyzed the Defendant's assets and finances for the past five years, basing its analysis on, among other things, bank statements, tax returns, and FBAR filings, providing a summary of the assets held by the Defendant and her spouse as well as the assets held in trust for the benefit of the Defendant for the period stemming from 2015 to 2020. *See* Def. Mot., Ex. O. In addition, the Defendant retained a Certified Fraud Examiner and a former IRS Special Agent, who reviewed the Macalvins report and the underlying documents and determined that report accurately represents the assets held by the Defendant and her spouse. *See* Def. Mot., Ex. P. The Defendant's new bail proposal is based on the numbers derived from the Macalvins report.

But even assuming that the financial report provides an accurate analysis of the Defendant's finances, the Court is unpersuaded by her argument that the bail package reasonably assures her appearance. As the Government argues, the bail package would leave unrestrained

millions of dollars and other assets that she could sell in order to support herself. *See* Gov't Opp'n at 23. Furthermore, the proposed bond is only partially secured. Taking into account the vast amounts of wealth left relatively unrestrained by the bail package, that amount, standing alone, cannot reasonably assure that she would appear before the Court. Nor is the Court's conclusion altered by the fact that a number of third parties have pledged to support her bond; the amount of wealth that she would retain were she to flee, in addition to contingent assets and future income streams that are not accounted for in the bail package, would plausibly enable her to compensate them, in part or in full, for their losses. And while the Defendant argues that she has procured "significant loans on the basis of a negative pledge" over a property and that $4 million is invested in an "illiquid hedge fund that could only be liquidated with considerable difficulty," *see* Def. Reply at 6, these arguments do not alter the Court's ultimate conclusion that the financial package does not meaningfully mitigate the possibility of flight.

The proposed conditions also provide that the Defendant would be released to the custody of a family member, who would serve as the Defendant's third-party custodian under 18 U.S.C. § 3142(c)(1)(B)(i); that the Defendant would be placed in home confinement with GPS monitoring and that her travel would be restricted to the Southern and Eastern Districts of New York and would be limited to appearances in Court, meetings with counsel, medical visits, and upon approval by the Court or Pretrial Services; that she would be under the strict supervision of Pretrial Services; and that she would surrender all travel documents. *Id.* at 2–3. Furthermore, the Defendant would have on-premises security guards who would prevent her from leaving the residence at any time without prior approval by the Court or Pretrial Services and who would escort her when she is authorized to leave. *Id.* at 3.

None of these conditions would reasonably assure the Defendant's appearance. Here, too, the Court's original determination applies with equal force. As the Court noted at the original hearing, the Defendant has demonstrated an extraordinary capacity to evade detection, "[e]ven in the face of what the Defense has acknowledged to be extreme and unusual efforts to locate her." Tr. at 87:4 87:19. Indeed, regardless of whether the Defendant sought to evade the press, rather than law enforcement, in the months leading up to her arrest, her sophistication in evading detection reveals the futility of relying on any conditions, including GPS monitoring, restrictive home confinement, and private security guards, to secure her appearance. *See* Tr. at 87:4 88:2. As other courts have observed, "home detention with electronic monitoring does not prevent flight; at best, it limits a fleeing defendant's head start." *United States v. Zarger*, No. 00-CR-773-S-1 (JG), 2000 WL 1134364, at *1 (E.D.N.Y. Aug. 4, 2000). Furthermore, while the Defendant now represents that she would be released to the custody of a family member, who would serve as the Defendant's third-party custodian under 18 U.S.C. § 3142(c)(1)(B)(i), and that she secured a residence in the Eastern District of New York, *see* Def. Mot. at 3, that does not outweigh the other significant factors weighing in favor of detention. And finally, the Defendant's argument that private security guards could ensure her appearance at future proceedings runs afoul of the Bail Reform Act, which the Second Circuit has held "does not permit a two-tiered bail system in which defendants of lesser means are detained pending trial while wealthy defendants are released to self-funded private jails." *United States v. Boustani*, 932 F.3d 79, 82 (2d Cir. 2019). As in *Boustani*, the Defendant in the present case would be detained regardless of her wealth, and "if a similarly situated defendant of lesser means would be detained, a wealthy defendant cannot avoid detention by relying on his personal funds to pay for private detention." *Id.*

In light of the above, the Court again concludes that the Government has shown by a preponderance of the evidence that the defendant presents a risk of flight and that the Defendant's proposed conditions are insufficient to reasonably assure her appearance. The presumption in favor of detention, the weight of the evidence, and the history and characteristics of the Defendant all support that conclusion, and none of Defendant's new arguments change the Court's original determination.

D. The Defendant's conditions of confinement do not justify release

Lastly, the Court is unpersuaded by the Defendant's argument that the conditions of her confinement are uniquely onerous, interfere with her ability to participate in her defense, and thus justify release. *See* Def. Mot. at 35–38. Indeed, the Defendant does not meaningfully dispute that she has received "more time than any other inmate at the MDC to review her discovery and as much, if not more, time to communicate with her attorneys." Gov't Opp'n at 29. To the extent that the Defendant has concerns regarding some of the measures taken by BOP, including a recent lockdown due to COVID-19 that curtailed in-person legal visitations, the Defendant provides no authority to conclude that this, standing alone, violates her constitutional right to participate in her defense. And while the Court acknowledges the Defendant's concerns regarding the conditions of her confinement, the Defendant has failed to provide any basis to conclude that release is warranted on those grounds—even after the Court has determined that she continues to pose a flight risk.[3]

[3] The Court will continue to ensure that the Defendant has the ability to speak and meet regularly with her attorneys and to review all necessary discovery materials to prepare for her defense. Defense counsel shall confer with the Government on any specific requests. To the extent they are not reasonably accommodated, an application may be made to the Court.

Finally, as the Court expressed at the initial bail hearing, it has deep concerns about the spread of COVID-19 at BOP facilities, including at the MDC. Indeed, in recent weeks, the incidence of COVID-19 among the inmate population where the Defendant is housed is truly alarming. *See COVID-19: Coronavirus*, Fed. Bureau of Prisons, https://www.bop.gov/coronavirus/ (last visited Dec. 28, 2020) (noting that the MDC currently has 99 inmates and 11 staff members who have tested positive for COVID-19). It could be argued that in the face of this, only those defendants who pose a danger to the community ought to be detained pending trial. If that were the law and in light of the increasing positivity rate, the Court would not hesitate to reopen the detention hearing and release the Defendant on bail since the Government rests none of its arguments on dangerousness. But that is not the law. Moreover, as the Court found at the initial bail hearing, the Defendant has no underlying health conditions that put her at heightened risk of health impacts were she to contract COVID. The pandemic, including increasing positivity numbers in the MDC, is not a basis for release in this case where the Court finds that the Defendant poses a substantial and actual risk of flight and that no combination of conditions could reasonably assure her appearance.

E. A hearing is unnecessary

Having carefully reviewed the parties' arguments, the Court determines that a hearing is unnecessary and that it can resolve the motion on the papers. The briefing from both sides comprehensively lays out the parties' respective arguments For the reasons stated above, none of the new information has a material bearing on the Court's determination that the Defendant poses a flight risk. Indeed, many of the reasons that the Court provided at the July 14, 2020 hearing continue to apply with equal, if not greater, force. The Court need not hold another

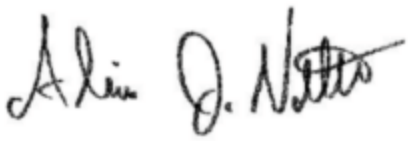
hearing to evaluate Maxwell's motion, and it declines to do so. *See United States v. Raniere*, No. 18-CR-2041 (NGG) (VMS), 2018 WL 6344202, at *2 n.7 (E.D.N.Y. Dec. 5, 2018).

IV. Conclusion

Defendant Ghislaine Maxwell's renewed motion for release on bail, Dkt. No. 97, is DENIED.

SO ORDERED.

Dated: December 28, 2020
New York, New York



ALISON J. NATHAN
United States District Judge

Exhibit I

Doc. 160
Memorandum in Support of Ghislaine Maxwell's Third Motion for Release on Bail

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

GHISLAINE MAXWELL,

Defendant.

20 Cr. 330 (AJN)

MEMORANDUM IN SUPPORT OF GHISLAINE MAXWELL'S THIRD MOTION FOR RELEASE ON BAIL

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INTRODUCTION

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

As Ms. Maxwell has stated on numerous occasions and reaffirms here: she has no intention or desire to leave this country. She is an American citizen, has lived in United States for 30 years, has strong family ties and the support of friends and family residing in this country. She wants nothing more than to remain in the United States under whatever conditions the Court deems necessary so that she can effectively prepare for trial and vigorously defend against the 25-year-old charges in the Indictment. Ms. Maxwell has already proposed an expansive and, to our knowledge, unprecedented set of bail conditions that would reasonably assure her appearance. (*See* Dkt. 97.) In light of the Court's denial of that application (*see* Dkt. 106), Ms. Maxwell now proposes two additional bail conditions to supplement the extraordinarily restrictive bail package she has already offered.

- First, Ms. Maxwell will renounce her French and British citizenship to eliminate any opportunity for her to seek refuge in those countries, if the Court so requires.

- Second, Ms. Maxwell will have her and her spouse's assets—excluding funds earmarked for living expenses, for legal fees and other expenses necessary to defend her against the criminal charges in this case and related civil lawsuits and for taxes—placed in a new account that will be monitored by a retired federal District Court judge and former United States Attorney who will function as asset monitor and will have co-signing authority over the account.

The former condition goes well beyond the extradition waivers that the Court deemed insufficient and should satisfy any concerns the Court may have that Ms. Maxwell may try to seek a safe haven in France or the United Kingdom. (*See id.* at 11-13). As a non-citizen, Ms. Maxwell will not be able to avail herself of any protections against extradition that may apply to

citizens of those countries. The latter condition will restrain Ms. Maxwell's assets so they cannot be used for flight or harboring her outside of the jurisdiction of this Court. This should satisfy the Court's concern that the proposed bond was not fully secured and left assets unrestrained that could be used for such purposes. (*See id.* at 17-18).

In addition, since the last bail application, Ms. Maxwell has submitted twelve pretrial motions that raise substantial legal and factual issues that may result in the dismissal of some or all of the charges against her. Ms. Maxwell referenced some of these motions in her initial bail application (*see* Dkt. 18 at 19) but was not in a position to fully articulate them until she had the chance to review the discovery and research the legal issues in advance of the motion deadline of January 25. These motions significantly call into question the strength of the government's case against Ms. Maxwell and the underlying justification for continued detention.

Ms. Maxwell has already been denied a fair chance in the court of public opinion. She has been maligned by the media, which has perpetuated a false narrative about her that has poisoned any open-mindedness and impartiality of a potential jury. She has been relentlessly attacked with vicious slurs, persistent lies, and blatant inaccuracies by spokespeople who have neither met nor spoken to her. She has been depicted as a cartoon-character villain in an attempt to turn her into a substitute replacement for Jeffrey Epstein. Yet, Ms. Maxwell is determined – and welcomes the opportunity – to face her accusers at trial and clear her name. The additional proposed bail conditions should quell any concerns that she would try to flee. The Court should therefore grant bail under the proposed conditions so that Ms. Maxwell can adequately prepare for trial.

I. The Proposed Additional Bail Conditions Will Reasonably Assure Ms. Maxwell's Appearance in Court

As set forth above, Ms. Maxwell now proposes two additional restrictions that eliminate any means or opportunity that she may have to leave the country. The Court should therefore reconsider its earlier ruling and grant bail under the proposed conditions. *See United States v. Rowe*, No. 02 CR. 756 LMM, 2003 WL 21196846, at *1 (S.D.N.Y. May 21, 2003) ("[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."); *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").

A. Renunciation of Foreign Citizenship

To demonstrate her commitment to abide by her conditions of release and to provide further assurance to the Court that she will not attempt to leave the country, Ms. Maxwell is willing to formally renounce her foreign citizenships in France and the United Kingdom. Should the Court feel this drastic condition is necessary, the required documents will be submitted to the appropriate authorities. Moreover, as a standard condition of bail, all of Ms. Maxwell's passports will be surrendered to the government and no further application will be made.

If the Court deems it a necessary condition of release, Ms. Maxwell will formally commence the procedure to renounce her foreign citizenship. The requisite paperwork is in the process of being completed. Renunciation of UK citizenship can be accomplished immediately upon granting of bail. The process of renouncing her French citizenship, while not immediate, may be expedited.

Citizenship is a precious and priceless asset. Ms. Maxwell's decision to give up citizenship from the county of her birth and the country of her upbringing demonstrates her

earnestness to abide by the conditions of her release and underscores that she has no intention to flee and reflects her deep need to communicate freely with counsel to prepare for her defense. Her renunciation of foreign citizenship obviates the Court's concerns about the validity of waivers of extradition. (*See* Dkt. 106 at 13). Ms. Maxwell will have no ability to contest extradition from France or the United Kingdom on the basis of citizenship, which removes any incentive the Court and government believe she may have to seek refuge in those countries.

B. Restraint and Monitoring of Assets

In denying bail, the Court noted that the bond was not fully secured, and that Ms. Maxwell and her spouse would still have several million dollars in unrestrained assets that could be used to facilitate her flight from the country. (*See id.* at 17-18). To assuage any concerns that those assets would be available to finance flight to and shelter in a foreign country, Ms. Maxwell has taken steps to create a monitorship that will place meaningful restraints on the assets that are not used to secure the bond, while still allowing Ms. Maxwell to pay for her legal defense, for her spouse to pay for daily living expenditures and for payment of taxes.

1. New Account

All assets of Ms. Maxwell and her spouse, with the exception of money currently held in escrow for legal fees and related defense expenses and the funds contained in the bank account in the name of Ms. Maxwell's spouse ("the Personal Account")[1], will be deposited in a newly created account ("the New Account") to be overseen by an asset monitor appointed pursuant to order of the Court. The New Account will contain all of Ms. Maxwell's and her spouse's remaining cash and other liquid assets, including any proceeds that result from the pending sale

[1] The Personal Account is identified as Account I on page 9 of the Financial Report annexed to Ms. Maxwell's Renewed Bail Application. (*See* Dkt. 97, Exhibit O.)

of Ms. Maxwell's London house and any other assets, excluding salary, hereinafter acquired. The asset manager will approve the financial institution at which the New Account is created and must approve and co-sign any expenditure from the New Account, with the exception of disbursements for Ms. Maxwell's legal fees in connection with the ongoing criminal and civil litigation and for payment of taxes, which will not require authorization. No illiquid assets may be sold, conveyed or transferred without approval of the asset monitor.

2. Other Assets

The only funds that will not be included in the New Account are (1) the money currently held in escrow by Ms. Maxwell's attorneys, which will be used exclusively for her defense; and (2) the roughly $450,000 in the Personal Account which her spouse will use only for living expenses. The asset monitor shall regularly receive information regarding activity of the Personal Account, including the account balance, on a weekly basis. The asset monitor must also receive five-day advance notice of any check, on-line payment, or transfer of funds in any amount exceeding $5,000, and the reason for such payment. Ms. Maxwell's spouse agrees to be bound by these restrictions and reporting requirements.

The asset monitor shall report to Pretrial Services any possible non-compliance or disbursement in violation of the terms and conditions specified above.

3. Selected Asset Monitor

The Honorable William S. Duffey, Jr., a retired federal District Court judge and the former United States Attorney for the Northern District of Georgia, has agreed to undertake the position of asset monitor. (Judge Duffey's bio is attached as Exhibit A.) Judge Duffey has extensive experience evaluating and monitoring funds held in and disbursed from financial

accounts and will be entrusted with the authority to oversee the assets of Ms. Maxwell and her spouse, as described above.

Restraining Ms. Maxwell's assets that are not used to secure the bond and placing them under the supervision of a former federal District Court judge eliminates any concern that such funds could be used to violate the terms of release.

II. Ms. Maxwell's Pretrial Motions Raise Substantial Legal and Factual Issues That Could Result in Dismissal of Some or All of the Charges Against Her

In addition to the new conditions proposed above, the numerous substantive pretrial motions now before the Court amply challenge the purported strength of the government's case. Ms. Maxwell's pretrial motions raise serious legal issues that could result in dismissal of charges, if not the entire indictment. Among the dozen submissions are motions to dismiss the superseding indictment for breach of the non-prosecution agreement, for pre-indictment delay, and for being based on improperly obtained evidence in violation of Ms. Maxwell's constitutional rights under the Fifth and Sixth the Amendments. Other motions seek dismissal of the Mann Act charges as being time-barred and the perjury charges as based on non-perjurious statements. These motions are substantial with a likelihood of success on the merits. These motions cast substantial doubt on the alleged strength of the government's case and warrant granting bail on the conditions proposed.

III. The Court Should Grant Bail

Under the Bail Reform Act of 1984, a defendant must be released on personal recognizance or unsecured personal bond unless the judicial officer determines "that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community." 18 U.S.C. § 3142(b). The enhanced bail package proposed by Ms. Maxwell contains financial burdens and a combination of restrictions that reasonably

assure her appearance as required. Before preventive detention may be ordered under § 3142(e), the Court is obliged to determine both whether the defendant *is likely to flee* the jurisdiction if released, and whether *any* conditions of release *will be reasonably certain* to guard against this propensity to flee. The Court expressed concerns and denied bail without indicating what conditions *would* be reasonably certain to assure Ms. Maxwell's appearance. Ms. Maxwell is no danger to the community and not alleged to have been involved in ongoing criminal activity. To say that there are absolutely no conditions flies in the face of cases where non-United States citizens with no ties to the district, let alone the country, were released on lesser conditions for alleged criminality ongoing up to or within hours of the time of arrest, in contrast to 26-year-old claims alleged against Ms. Maxwell.[2]

The additional conditions set forth above, which supplement the exceptional bail package previously proposed, are sufficient to address the hypothetical risk of flight and secure Ms. Maxwell's presence at trial. The financial magnitude of the proposed bonds, the collateral pledged to secure the bonds, the stringent requirements of home detention, the renunciation of foreign citizenship and monitoring of assets contained in a special account from which no funds can be withdrawn without the approval and signature of a retired federal District Court judge and former United States Attorney are conditions that amply satisfy the concerns expressed by the government and the Court. These cnditions are unique and unprecedented. They profoundly

[2] *See* Dkt. 97 at 34 (case-comparison chart in the Renewed Motion for Bail); *cf. People v. Dominique Strauss-Kahn,* 02526/2011(S.Ct. N.Y. County). Strauss-Kahn, a French citizen with no ties to the United States, was arrested on a Paris-bound flight at JFK minutes before takeoff and later charged with several counts of sexual assault, including felony charges punishable up to 25 years imprisonment, for sexual assault and attempted rape of a Manhattan hotel housekeeper on the day of his arrest. The accusations were corroborated by semen containing Strauss-Kahn's DNA on the accuser's uniform. The New York State Supreme Court granted bail in the amount of $1 million cash, 24-hour home detention electronic monitoring ankle bracelet, and private 24/7 security guards. After surrendering his French passport and posting an additional $5 million bail bond, Strauss-Kahn was placed under house arrest in a residence in Manhattan. *See* https://www.theguardian.com/world/2011/ may/20/dominique-strauss-kahn-new-york-apartment.

affirm Ms. Maxwell's earnestness in seeking bail to properly prepare her defense, not to flee. The Court should grant bail to Ghislaine Maxwell.

CONCLUSION

The proposed additional conditions of release—renunciation of foreign citizenship and restraint and monitoring of assets by a retired District Court judge—enhance the already extraordinarily restrictive bail conditions proposed in Ms. Maxwell's Renewed Motion for Bail. In combination, these conditions satisfy the Bail Reform Act and reasonably assure Ms. Maxwell's appearance at trial. To deny Ms. Maxwell bail when such extraordinary and restrictive conditions are available would be a miscarriage of justice.

Dated: February 23, 2021

Respectfully submitted,

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Exhibit J

Doc. 165
The Government's Response in Opposition to Defendant's Third Motion for Release on Bail

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

March 9, 2021

BY ECF & ELECTRONIC MAIL

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

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

Dear Judge Nathan:

The Government respectfully submits this letter in opposition to the defendant's third motion for release on bail, dated February 23, 2021 (the "Third Bail Motion" or the "Motion"). (Dkt. No. 160). On July 14, 2020, after extensive briefing and a lengthy hearing, this Court concluded that the defendant posed a serious flight risk and that no condition or combination of conditions could ensure her appearance in court. On December 28, 2020, after the defendant renewed her motion for release on bail (the "Second Bail Motion") by essentially restating her prior arguments and presenting a more significant and specific bail package, this Court issued a thorough opinion and again concluded that the defendant "plainly poses a risk of flight" and denied the motion for "substantially the same reasons that the Court denied" her first motion for release. (Dkt. No. 106 at 1-2 ("Dec. Op.")). The defendant appealed this Court's December 2020 decision to the Second Circuit, and that appeal remains pending. Now, the defendant asks the Court yet again to reconsider its decision, and proposes two additional bail conditions to supplement the bail package the Court previously considered and rejected. For the reasons set forth below, the Motion should be denied. *First*, the Court does not have jurisdiction to grant the Third Bail Motion—in which she asks this Court to reconsider its December opinion—because the defendant has appealed that December opinion to the Second Circuit. *Second*, even assuming the Court had jurisdiction to grant this latest bail application, the Court should adhere to its prior rulings because the defendant continues to pose an extreme risk of flight, and the additional bail conditions proposed by the defendant do not justify reversal of the Court's prior findings that no combination of conditions could ensure her appearance. The defendant's Third Bail Motion should be denied.

I. Background

The Government's December 16, 2020 opposition to the defendant's Second Bail Motion details the background of the initial bail proceedings in this case and is incorporated by reference herein. (*See* Dkt. No. 100 at 2-6). After this Court denied the defendant's initial application for

bail in July 2020, the defendant filed a renewed motion for release in December 2020 in which the defendant proposed a "substantially larger bail package" and presented arguments that "either were made at the initial bail hearing or could have been made then." (Dec. Op. at 1). In denying that second application, the Court found that the information provided in the Second Bail Motion "only solidifies the Court's view that the Defendant plainly poses a risk of flight and that no combination of conditions can ensure her appearance." (*Id.* at 1-2).

On January 11, 2021, the defendant filed a notice of appeal to the Second Circuit appealing the Court's December 2020 opinion denying the Second Bail Motion. (Dkt. No. 113). That appeal is pending; the defendant has not yet filed her brief in support of the appeal.

On February 23, 2021, the defendant submitted the Third Bail Motion, in which she proposed two additional bail conditions to "supplement the . . . bail package she has already offered" in the Second Bail Motion (Mot. at 2): (1) renunciation of the defendant's French and British citizenship; and (2) placement of a portion of her and her spouse's assets in a new account to be overseen by an asset monitor.

II. The Court Does Not Have Jurisdiction to Grant the Third Bail Motion Because of the Defendant's Pending Bail Appeal

The defendant asks this Court to "reconsider its earlier ruling and grant bail under the proposed conditions." (Mot. at 4). More specifically, the defendant asks the Court to consider the exact same package previously considered and rejected in the December opinion, as now "supplement[ed]" by two additional conditions. (*Id.* at 2, 8). However, the Court lacks jurisdiction to grant the Motion by virtue of the defendant's appeal of the Court's prior ruling to the Second Circuit.

"As a general matter, 'the filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.'" *United States v. Rodgers*, 101 F.3d 247, 251 (2d Cir. 1996) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). "The divestiture of jurisdiction rule . . . is a judicially crafted rule rooted in the interest of judicial economy, designed 'to avoid confusion or waste of time resulting from having the same issues before two courts at the same time.'" *Rodgers*, 101 F.3d at 251 (quoting *United States v. Salerno*, 868 F.2d 524, 540 (2d Cir. 1989)); *see also United States v. Ransom*, 866 F.2d 574, 576 (2d Cir. 1989) (describing the *Griggs* rule as "promot[ing] the orderly conduct of business in both the trial and appellate courts").

In January 2021, the defendant filed an appeal from the Court's December 28, 2020 Opinion and Order denying her Second Bail Motion. The defendant's Third Bail Motion not only seeks reconsideration of the very issue presently on appeal but does so by proposing two additional bail conditions to "supplement" the bail package proposed in the defendant's Second Bail Motion, (Mot. at 2, 8), a package which this Court considered and concluded could not "reasonably assure her appearance." (Dec. Op. at 16). Accordingly, the defendant's Third Bail Motion also concerns bail and is thus an "aspect[] of the case involved in the appeal." *Rodgers*, 101 F.3d at 251. The

defendant cannot simultaneously pursue bail in both the Second Circuit and the district court. To allow her to seek relief in both venues runs counter to the principles of judicial economy underpinning the divestiture of jurisdiction upon the filing of a notice of appeal. *See Rodgers*, 101 F.3d at 251.[1]

The Court's lack of jurisdiction to grant the Third Bail Motion does not leave the defendant without a remedy. The defendant can withdraw her pending bail appeal to restore jurisdiction to this Court. Alternatively, the Court can follow the procedure set forth in Rule 37(a) of the Federal Rules of Criminal Procedure, which provides that if the defendant makes a timely motion for relief "that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may: (1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue." However, the defendant should not be permitted to simultaneously pursue bail in both this Court and the Second Circuit.

III. The Court Should Not Reverse Its Prior Well-Reasoned and Thorough Bail Decisions

Even if this Court had jurisdiction to grant the Third Bail Motion, the motion should be denied. This Court has already twice made the determination that the defendant poses a risk of flight. In particular, the Court has found, "the charges, which carry a presumption of detention,

---

[1] While the Government has not identified a case addressing the precise issue with which the Court is confronted, several considerations support the Government's position that the Court does not presently have jurisdiction to grant the Third Bail Motion. In addition to the rule articulated by the Supreme Court in *Griggs*, in *Ching v. United States*, the Second Circuit found that while an appeal from the denial of a Section 2255 motion was pending, the district court could not rule on a motion to amend the Section 2255 motion. 298 F.3d 174, 180 n.5 (2d Cir. 2002) ("The district court could not rule on any motion affecting an aspect of the case that was before [the Second Circuit], including a motion to amend the motion, while that appeal was pending."). Here, too, while the defendant's appeal of the denial of the Second Bail Motion is pending, the Court should not grant the defendant's motion to reconsider that very same bail ruling. Rule 9 of the Federal Rules of Appellate Procedure, which governs release in a criminal case, also supports such a reading. Rule 9(b), which governs release *after* a judgment of conviction, provides that a "party entitled to do so may obtain review of a district-court order regarding release after a judgment of conviction by filing a notice of appeal from that order in the district court, or by filing a motion in the court of appeals if the party has already filed a notice of appeal from the judgment of conviction." In *United States v. Hochevar*, 214 F.3d 342 (2d Cir. 2000), the Second Circuit found that Rule 9(b) contemplates going to the district court first for a bail ruling after a notice of appeal from the judgment of conviction is filed. Rule 9(a), which governs release *before* a judgment of conviction, does not say anything about going back to the district court for a new bail ruling after a notice of appeal from a prior bail ruling is filed. In addition, Rule 9(a)(2) provides that the court of appeals "must promptly determine" the pre-judgment bail appeal. Such promptness would not be necessary if defendants could go back to the district court with another bail motion while the bail appeal is pending.

are serious and carry lengthy terms of imprisonment if convicted; the evidence proffered by the Government, including multiple corroborating and corroborated witnesses, is strong; the Defendant has substantial resources and foreign ties (including citizenship in a country that does not extradite its citizens); and the Defendant, who lived in hiding and apart from the family to whom she now asserts important ties, has not been fully candid about her financial situation." (Dec. Op. at 2). In seeking bail for a third time, the defendant's Motion rests principally on two additional bail conditions. Neither of these conditions will reasonably assure the defendant's appearance in court, and neither outweighs all of the other factors that make this defendant an extreme flight risk. Moreover, the Court should reject as premature the defendant's assertion that her pretrial motions have somehow weakened the Government's case; those motions have not been adjudicated, and, for the reasons set forth in the Government's opposition memorandum, the defendant's motions have no merit.

In short, all three of the relevant Bail Reform Act factors—the nature and circumstances of the offense, the strength of the evidence, and the history and characteristics of the defendant—continue to weigh heavily in favor of detention, and the defendant's Motion does not present any information that warrants revisiting this Court's well-reasoned and detailed prior decisions.

A. Applicable Law

"After a court has made an initial determination that no conditions of release can reasonably assure the appearance of the Defendant as required, the Court may reopen the bail hearing if 'information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue' of whether pretrial detention is warranted." (Dec. Op. at 4 (quoting 18 U.S.C. § 3142(f)). "A court may also revisit its own decision pursuant to its inherent authority, even where the circumstances do not match § 3142(f)'s statutory text." (*Id.* at 5). Although courts in this Circuit have recognized that "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), generally the moving party must establish that its arguments "warrant reconsideration" by, for example, demonstrating "that the court overlooked information or incorrectly applied the law," or that failure to reconsider "would constitute manifest injustice." *United States v. Petrov*, No. 15 Cr. 66 (LTS), 2015 WL 11022886, at *3 (S.D.N.Y. Mar. 26, 2015).

B. Discussion

The defendant's Motion rests on three arguments, none of which is availing. First, the defendant offers to renounce her foreign citizenship, claiming that this eliminates the risk that she will flee from prosecution. Second, the defendant offers to place some of her assets in a monitorship with unspecified terms, and which would still leave her with substantial unrestrained assets. Third, the defendant claims that her voluminous pretrial motions have diminished the strength of the Government's case. None of these arguments is persuasive, and the Motion should be denied.

1. The Defendant's Alleged Willingness to Renounce Her Foreign Citizenship Should Not Alter the Court's Prior Bail Determinations

The defendant contends that she has materially strengthened her proposed bail package by offering to renounce her foreign citizenship "if the Court so requires." (Mot. at 2). She claims that such a renunciation will "eliminate any opportunity for her to seek refuge" in France and the United Kingdom or "remove[] any incentive the Court and government believe she may have to seek refuge in those countries." (*Id.* at 2, 5). The defendant is wrong. That she is "willing" to renounce her foreign citizenship would do nothing to prevent the defendant from fleeing and then fighting extradition once abroad, and it does nothing to diminish the risk that the defendant could choose to flee to another jurisdiction altogether, including one with which the United States does not have an extradition treaty and from which extradition is impossible. The Court previously found that the likelihood that the defendant "would be able to *frustrate* any extradition requests . . . weighs strongly in favor of detention" (Dec. Op. at 13); the defendant's Motion provides no basis to disturb this finding. Indeed, just as the defendant's offer to execute anticipatory extradition waivers failed to provide the Court with any assurance that she would not frustrate any potential extradition, so too should her offer to renounce her foreign citizenship.

First, the defendant's willingness to renounce her citizenship is an offer of unclear validity. As an initial matter, the defendant's offer is itself of little value, as she would at bare minimum have to follow the legal requirements attendant to each country in order to formally renounce her citizenship. Moreover, she provides no assurances—nor could she—that she will not contest the validity and/or voluntariness of such a renunciation once she is actually in France or the United Kingdom. For example, the Government understands that in order to give up one's British citizenship or status, one must be, among other things, "of sound mind (unless it's decided that it's in your best interest)." *See* www.gov.uk/renounce-british-nationality. The defendant could choose to frustrate any future extradition proceedings by claiming that her decision to give up her citizenship was compelled by some person or circumstance, or that she was not of sound mind. Simply put, while the defendant may believe that it is in her interest to give up her citizenship now, there is no way for the defendant to assure the Court that she will not take the contrary position in the future if she believes it to be in her interest at the time. And even if the defendant could not challenge her renunciation, it is unclear whether, as a separate matter, she could seek to have her citizenship rights restored.

Second, and related, the defendant has offered no authority for the proposition that her offer to renounce foreign citizenship would have any impact on an extradition proceeding, nor has she reckoned with the Court's findings regarding her offer to sign a so-called irrevocable waiver of her extradition rights. *See United States v. Cohen*, No. 10 Cr. 547 (SI), 2010 WL 5387757, at *9 n.11 (N.D. Cal. Dec. 20, 2010) ("Defendant's offers to turn in his passports, to 'renounce' his Israeli citizenship, and have someone 'instruct' the Israeli embassy to deny new documents or travel authorizations to defendant, as well as his offer to waive extradition—assuming he flees overseas at some point—do not sufficiently assure the Court that defendant is not still a flight risk. Defendant offers no authority about the real impact of these offers or whether they are enforceable in Israel if defendant were to flee there."). The Court placed "little weight" on the defendant's argument in the Second Bail Motion that waiver of the right to appeal an extradition order indicates

her intent not to flee. (Dec. Op. at 13 n.2). The Court recognized that "a defendant could strategically offer to waive the right to extradition while intending to resist any subsequent extradition that might result." (*Id.*). So too here. An offer to renounce her foreign citizenship "[s]hould the Court feel this drastic condition is necessary," (Mot. at 4) is another strategic, but hollow offer given that the defendant would be free to fight extradition once in the United Kingdom or France, or any other jurisdiction of her choosing (*i.e.*, the one to which she chooses to flee).

As such, the defendant's claimed "willing[ness]" to renounce her citizenship in both the United Kingdom and France is little more than window dressing. After receiving the defendant's Third Bail Motion, the Government, through the Department of Justice's Office of International Affairs ("OIA"), contacted the French Ministry of Justice ("MOJ") to understand the impact of the defendant's offer to renounce her French citizenship on France's categorical unwillingness to deport its own citizens for crimes they have committed. In response, the MOJ provided the Government with a letter setting forth the relevant law and conclusively indicating that the defendant's offer to waive her French citizenship will not make her eligible to be extradited from France because, for purposes of extradition, nationality is assessed as of the time the charged offense was committed. That letter in its original French, as well as an English translation of the letter, are attached hereto as Exhibit A. *See* Ex. A ("[A]ny loss of nationality subsequent to said offense has no bearing upon the removal proceedings and shall not supersede said assessment of nationality."); *see also* Dkt. No. 100, Ex. B at 3 (MOJ letter stating that the French Code of Criminal Procedure "absolutely prohibits the extradition of a person who had French nationality at the time of the commission of the acts for which extradition is requested"). The defendant's renunciation of her French citizenship in 2021 would not change the fact that she was a French citizen at the time she is alleged to have committed the charged crimes in the 1990s and 2016. As such, the defendant's citizenship at the time of the alleged crimes would bar her extradition from France, making her offer to renounce her French citizenship meaningless.

Meanwhile, the defendant's offer to give up her British citizenship does not mean that she will not fight extradition once in the United Kingdom or that an extradition request to the United Kingdom would be successful. The Government understands from OIA that a defendant's nationality has historically played little to no role in extradition from the United Kingdom. Indeed, Article 3 of the 2003 Extradition Treaty between the United States and the United Kingdom expressly prohibits using nationality as a basis to deny extradition. *See* https://www.congress.gov/108/cdoc/tdoc23/CDOC-108tdoc23.pdf at 5 ("Extradition shall not be refused based on the nationality of the person sought."); *see also* Crown Prosecution Service, *Extradition, Legal Guidance, International and organised crime* (May 12, 2020), https://www.cps.gov.uk/legal-guidance/extradition (setting forth the statutory bars to extradition, which do not include nationality). In any event, assuming the Government could locate and apprehend the defendant if she were to flee, as set forth in the Government's opposition to the Second Bail Motion, a judge in the United Kingdom must make an independent decision on extradition based on the circumstances at the time the defendant is before the court, including the passage of time, forum, and considerations of the individual's mental or physical condition. The Government understands from OIA that extradition from the United Kingdom is frequently extensively litigated, uncertain, and subject to multiple levels of appeal. This process is lengthy, complicated, and time-consuming, and would provide no measure of justice to the victims who

would be forced to wait years for the defendant's return.

As the Government has repeatedly emphasized, the strong possibility that the defendant could successfully resist extradition only heightens the defendant's incentive to flee. (Dkt. No. 100 at 19-20). Indeed, in rejecting the defendant's offer in the Second Bail Motion to execute anticipatory extradition waivers, the Court noted, among other things, "the likelihood that any extradition would be a difficult and lengthy process." (Dec. Op. at 13). The Court further noted that the "likelihood that the Defendant would be able to *frustrate* any extradition requests—even if she were correct that she would be unable to stop extradition entirely—weighs strongly in favor of detention." (*Id.*). That statement remains true even if the face of the defendant's newest offer to renounce her foreign citizenship.

As this Court previously found, the defendant has substantial international ties, familial and personal connections abroad, and owns at least one foreign property of significant value. (Dec. Op. at 10-11). The defendant's alleged willingness to renounce her foreign citizenship should not fundamentally alter the Court's conclusions.

2. The Court Should Reject the Defendant's Proposed Monitorship Condition

Next, the defendant has offered to place a portion of her and her spouse's assets into a new account that "will be monitored by a retired federal District Court judge and former United States Attorney who will function as asset monitor and will have co-signing authority over the account." (Mot. at 2). This proposed condition—the details of which are vague—is insufficient to ensure that the defendant appears in Court.

It first bears noting that the defendant's finances—and her candor with the Court about those finances— is not an issue of first impression. Significantly absent from the defendant's Motion is any attempt to address the Court's determination that the defendant's "lack of candor raises significant concerns as to whether the Court has now been provided a full and accurate picture of her finances and as to the Defendant's willingness to abide by any set of conditions of release." (Dec. Op. at 16). That is critical because the value of any proposed monitorship would depend entirely on the monitor having a completely accurate picture of the defendant's finances and access to all of her accounts and sources of wealth. Given the Court's concerns about the defendant's candor, the Court should hesitate before trusting the defendant to be transparent with a monitor under her employ.

In any event, even if the Court were to accept the defendant's representations about her assets at face value, the defendant's proposal would leave the defendant with significant assets unrestrained. In particular, the defendant's proposal does not in any way restrain her $2 million townhouse in London, which she could live in or sell to support herself. Although the defendant asserts that the monitor would oversee any account into which the proceeds of the sale of the defendant's properties were deposited, the defendant does not explain how the monitor—or this Court—would have the authority to force the defendant to deposit foreign assets in a domestic account. As the Government has previously explained, the Government cannot realistically recover assets abroad. Accordingly, the defendant's proposal would leave her with access to at

least $2 million. In addition, the defendant proposes that she retain an additional half a million dollars in liquid assets in an unrestrained account, as well as any future income.[2] That figure appears to be in addition to the approximately $1 million in "chattels" the defendant has disclosed among her various assets. *See* Dkt. 97, Ex. O at 9. In short, the defendant's proposal would leave her with ample resources to fund her flight from prosecution.

Further still, the defendant's Motion provides only cursory details of the monitorship program she proposes, and it offers no legal precedent to explain what, if any, authority this Court has to establish and oversee such a monitorship. Aside from defense counsel's assertions, the Motion offers nothing that would enable the Court to meaningfully consider the details of such a monitorship. Among other things, it is unclear from the defendant's Motion whether such a program would require the defendant's voluntary compliance with the monitorship, or whether the funds would be placed in a bank account that the defendant could not access. Given that the defendant's Motion suggests that attorney's fees could be disbursed without approval, it appears that the defendant's proposal would provide her latitude to engage in financial transactions, subject only to a review that would require her voluntary compliance.

Finally, although the defendant does not provide any detail about the amount of money she would pay the monitor, presumably the monitor would not undertake this responsibility for free. As a result, the tension between the monitor's obligation to review the defendant's finances and the monitor's employment relationship with the defendant creates a conflict of interest. But at bottom, if the Court determines that the only way to keep the defendant from using her assets to flee is to take away control of her assets, then she is too great a flight risk to release.

In sum, in light of this Court's determination that the defendant "has not been fully candid about her financial situation," the Court should reject the defendant's vague proposal. (Dec. Op. at 2). Nothing in the defendant's Motion should alter the Court's determination that the defendant poses a significant risk of flight, and that she has the resources and skills to flee prosecution. The Court should reject the proposed bail conditions.

3. The Defendant's Pending Pretrial Motions Have Not Diminished the Strength of the Government's Case

Finally, the defendant also argues that the "numerous substantive pretrial motions now before the Court amply challenge the purported strength of the government's case." (Mot. at 7). But the defendant cannot merely point to the sheer volume of briefing she has filed to suggest that the strength of the Government's case has diminished. To the contrary, as the Government has set forth in detail in its memorandum in opposition, the defendant's pretrial motions are entirely without merit. In any event, it is premature for the defendant to claim that her pretrial motions—which have not been adjudicated, much less granted—have altered the Court's original

[2] The defendant's proposal also leaves unrestrained several million dollars in escrow for the defendant's legal fees. *See* Dkt. 97, Ex. O at 9 (listing approximately $7.6 million in retainer fees); *see also* Mot. at 6. If the defendant fled the country, her counsel would presumably be required to return those funds to the defendant, who would no longer need defense counsel in this case.

determination that the Government's case is strong.

IV. Conclusion

The defendant continues to represent a "plain[]" risk of flight. (Dec. Op. at 1). Even assuming the Court has jurisdiction to grant this third bail motion, the two new bail conditions offer insufficient protection against the "substantial and actual risk of flight" this Court has already found that the defendant poses. (*Id.* at 21). The defendant's Third Bail Motion should be denied.

Respectfully submitted,

[redacted]
United States Attorney

By: s/
[redacted] / [redacted] / [redacted]
Assistant United States Attorneys
Southern District of New York

Cc: All Counsel of Record (By email)

MINISTÈRE
DE LA JUSTICE
Liberté
Égalité
Fraternité

Direction des affaires criminelles et des grâces

Sous-direction de la justice pénale spécialisée
Bureau de l'entraide pénale internationale

Paris, le 9 mars 2021

Monsieur le garde des Sceaux, ministre de la Justice

à

Department of Justice (D.O.J)

Par l'intermédiaire d'Andrew FINKELMAN, magistrat de liaison
Ambassade des Etats-Unis d'Amérique à Paris

J'ai l'honneur de porter à votre connaissance que la procédure et les conditions d'extradition sont régies en France par les articles 696 et suivants du code de procédure pénale.

L'article 696-2 de ce code prévoit ainsi que « *le gouvernement français peut remettre, sur leur demande, aux gouvernements étrangers, toute personne n'ayant pas la nationalité française qui, étant l'objet d'une poursuite intentée au nom de l'Etat requérant ou d'une condamnation prononcée par ses tribunaux, est trouvée sur le territoire de la République.* »

L'article 694-4 précise expressément que :

« *L'extradition n'est pas accordée :*

1° Lorsque la personne réclamée a la nationalité française, ***cette dernière étant appréciée à l'époque de l'infraction pour laquelle l'extradition est requise*** ».

Ainsi, le fait que la personne recherchée ait la nationalité française constitue un obstacle insurmontable à son extradition. Dès lors que cette nationalité s'apprécie au moment de la commission de l'infraction, la perte de la nationalité, postérieurement à la commission de cette dernière, est sans incidence sur la procédure d'extradition, et ne permet pas de lever cet obstacle.

Le Chef du Bureau de l'Entraide Pénale Internationale

Philippe JAEGLÉ

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MINISTRY OF JUSTICE
Liberty
Equality
Fraternity

Directorate of Criminal Affairs & Pardons

Specialized Criminal Justice Sub-Directorate
International Criminal Assistance Bureau

Paris, March 9, 2021

His Honor the Keeper of Seals, Minister of Justice

To the

Department of Justice (D.O.J)

Through Andrew FINKELMAN, Liaison Magistrate on behalf of the Embassy of the United States of America located in Paris, France

I hereby inform you that in France, all removal proceedings and conditions are governed by Articles 696 et sq. of the Code of Criminal Procedure.

Article 696-2 of said Code provides that: "*The French government is able to remit to foreign governments upon their request any individual who is not a French citizen and who is subject to a lawsuit brought on behalf of the requesting State, or who is subject to a sentence passed by the Court of said requesting State, and who is located on the territory of the French Republic.*"

Article 694-4 expressly specifies as follows:

"*Removal is not granted:*

1- When the individual claimed to have French citizenship, ***said citizenship having been assessed at the time of the offense on the basis of which removal is being requested.***"

WHEREBY, the fact that the wanted individual is a French national constitutes an insuperable obstacle to his/her removal. As long as said nationality is assessed at the time the offense was committed, any loss of nationality subsequent to said offense has no bearing upon the removal proceedings and shall not supersede said assessment of nationality.

Head of the International Criminal Assistance Bureau

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Exhibit K

Doc. 171
Reply Memorandum of Ghislaine Maxwell in Support of Her Third Motion for Bail

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

v.

20 Cr. 330 (AJN)

GHISLAINE MAXWELL,

Defendant.

---------- x

REPLY MEMORANDUM OF GHISLAINE MAXWELL
IN SUPPORT OF HER THIRD MOTION FOR BAIL

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Attorneys for Ghislaine Maxwell

Preliminary Statement

The issue before the Court, as it has been since Ms. Maxwell's first bail application, is whether conditions exist that can reasonably assure Ms. Maxwell's appearance at trial. On her third application (the "Third Bail Motion") (Dkt.160), Ms. Maxwell has put before the Court significant enhancements to the already extraordinary bail package previously presented to the Court in her renewed application for bail (the "Second Bail Motion") (Dkt. 97).[1] Together, these two motions present a unique and comprehensive bail package with the strictest of conditions known in any bail application:

- $28.5 million in bonds (including a $1M bond co-signed by a security company);
- $9.5 million in real property;
- $550,000 in cash;
- Asset Monitoring by a retired federal district court judge;
- Renunciation of British and French citizenship;
- Irrevocable written waivers of the right to contest extradition;
- Surrender of all travel documents;
- Home confinement in New York City;
- Electronic GPS monitoring;
- In-residence third-party custodian;[2]

[1] Ms. Maxwell's present motion (the "Third Bail Motion") (Dkt.160) incorporates her Memorandum in Support of Her Renewed Motion for Bail and accompanying exhibits (Dkt. 97, including Attachments 1-24) and her Reply Memorandum in Support of Her Renewed Motion for Bail (Dkt. 103, including Attachments 1-2) (collectively, the "Second Bail Motion").

[2] To assist Ms. Maxwell in making up for lost time preparing for her upcoming trial, one of her lawyers (not trial counsel) has agreed to reside with her and serve as an additional residential custodian.

- On-premises 24/7 private security to prevent Ms. Maxwell from leaving the residence without pre-approval by the Court or Pretrial Services and to escort her when authorized to leave the residence;
- Visitors to be pre-approved by Pretrial Services;
- Strict supervision by Pretrial Services;
- Such other terms as the Court deems appropriate.

The government goes to great lengths to oppose bail arguing technicalities and offering unfounded innuendo ripped from the tabloid headlines to avoid addressing the merits of Ms. Maxwell's exceptional bail package, which puts at risk everything she has, including the assets of her spouse and the financial security of her family and closest friends.

The Court Retains Jurisdiction to Decide Matters Related to Bail

The government asserts that the Court should not consider the present bail motion because appeal of denial of the Second Bail Motion, not yet briefed, is pending before the Second Circuit. (Dkt. 165 at 2-3). It is ironic that the government takes this position given that it created this problem by opposing Ms. Maxwell's request for an enlargement of time to file a notice of appeal to the Court's denial of her Second Bail Motion. Indeed, Ms. Maxwell sought the extension to avoid this very issue. (Dkt. 109). The government should not now be allowed to turn that procedural sword into a jurisdictional shield to prevent the Court from considering the instant motion.

Divestiture of jurisdiction in the district court while an appeal is pending is not a per se rule. Rather, it is a judicially crafted rule rooted in the interest of judicial economy that is designed to avoid confusion or waste of time resulting from having the same issues before two courts at the same time. Divestiture of jurisdiction, therefore, should not be automatic, but

instead guided by concerns of efficiency. Here, it is unclear whether interlocutory appeal of a district court's decision regarding bail "divests the court of its control over aspects of the case involved in the appeal." *United States v. Rodgers*, 101 F.3d 247, 251 (2d Cir. 1996). Were it so, a district court would have no authority to remand or modify bail conditions of a defendant released while the government appeals the grant of bail. Such a rule would detract from, rather than promote, judicial economy and would be unworkable in practice.

Should the Court believe it does not have jurisdiction to decide the present bail motion, Ms. Maxwell will move the Circuit to withdraw her notice of appeal without prejudice and thereby remove any theoretical bar to this Court's jurisdiction over the present bail motion. Should the Court summarily deny the present motion on the merits, Ms. Maxwell will file a notice of appeal and request consolidation of both appeals.

Renunciation of Foreign Citizenship is a Valid and Significant Condition of Release

Relying on a letter from the French Ministry of Justice, the government urges the Court to give no weight to Ms. Maxwell's agreement to renounce her foreign citizenship. But the letter is wrong on the law and should be disregarded. The letter asserts that the loss of French nationality subsequent to the criminal act which the person is alleged to have committed does not affect the rule against the extradition of nationals, as nationality must be assessed at the time of commission of the offense and not at the time of the extradition request. As discussed in the opinion from William Julié, French legal counsel (attached as Exhibit A), the government's assertion is entirely incorrect for the following reasons:

- The government's argument goes against the letter of the law.
- The government's argument goes against the spirit of the law.
- The government's argument is contradicted by precedent and case law.

(Julié Opinion ¶¶ 6-26).

The language of the extradition treaty between the United States and France and the applicable French statues are clear that anyone seeking to contest extradition on the basis of French citizenship must be a French national *at the time of the extradition request*. (*Id.* ¶ 11). The provisions on which the government relies were not intended to apply in cases where the person whose extradition is sought had lost French citizenship. To the contrary, it was designed to apply to individuals who had *acquired* French citizenship subsequent to the commission of the alleged crime "in order to avoid fraudulent nationality applications of offenders seeking to escape extradition." (*Id.* ¶¶ 15-16). If the person is no longer a French national at the time of the request, the provision does not apply. The government cites no case where the relevant statute was applied to protect a formerly French national from extradition, and we have found none ourselves. (*Id.* ¶¶ 19-21). By contrast, there are numerous examples of French courts *deporting* individuals who have lost French nationality following the commission of an offense. (*Id.* ¶ 21). Accordingly, Mr. Julié concludes: "[I]t cannot have been the intention of French lawmakers that Article 696-4 be construed as meaning that a person who has lost French nationality would still be entitled to be protected from extradition." (*Id.* ¶ 26).

Ms. Maxwell's agreement to give up both British and French citizenship and waive any and all right to contest extradition is a formidable challenge to the assertion that Ms. Maxwell would likely flee if released from custody and goes above and beyond the "reasonable assurances" that the Bail Reform Act requires to grant bail. While we maintain that Ms. Maxwell's written waivers of the right to challenge extradition should suffice, her willingness to forfeit citizenship birthrights exceeds what is necessary and profoundly demonstrates her commitment to abide by conditions of release and appear at trial.

Monitoring of Assets is a Valid and Significant Condition of Release

To address the Court's concern about Ms. Maxwell's access to assets, the bail motion proposed another extremely significant and restrictive bail condition – the imposition of a monitor to supervise the assets of Ms. Maxwell and her spouse and approve expenditures. Rather than suggest conditions to satisfy its concerns, the government urges the Court to summarily reject the proposed monitorship.

William S. Duffey, Jr., a retired federal district court judge and the former United States Attorney for the Northern District of Georgia, has agreed to undertake appointment by the Court as asset monitor. Judge Duffey has extensive experience evaluating and monitoring funds held in and disbursed from financial accounts. He has agreed to serve by appointment of the Court in a capacity similar to other trustees and receivers who serve as officers of the Court and are entrusted, pursuant to court order, with oversight authority to restrain, monitor, and approve disbursement of assets requiring his signature. Similar to others who have been appointed by courts to oversee financial matters, Judge Duffey will be compensated at the same hourly rate billed for his services as an ADR panelist for Federal Arbitration (FedArb).

The proceeds from the sale of Ms. Maxwell's London home will be restrained and monitored by Judge Duffey. As required by court order, documentation concerning the proceeds of the sale will be provided to Judge Duffey and the funds will be deposited in the financial account approved by Judge Duffey.

The government tries to steer the Court's attention to allegations of Ms. Maxwell's lack of candor to dissuade the Court from considering the proposed monitorship as a meaningful restraint on the assets of Ms. Maxwell and her spouse. As previously stated, despite being questioned by Pretrial Services following a period of solitary confinement, suicide watch, sleep

deprivation, and other conditions adverse to her physical health and mental well-being, Ms. Maxwell responded appropriately and accurately to questions posed by Pretrial Services which were restricted to her personal assets. Since then, financial documents - collected and professionally vetted by a highly respected accounting firm – have been submitted to the government and the Court and provide full details and supporting documentation concerning Ms. Maxwell's personal assets and those jointly held with the spouse. Further, no valid challenge has been made to those submissions.

The government challenges the Court by inanely stating that if "the only way to keep the defendant from using her assets to flee is to take away control of her assets, then she is too great a risk to release." (Dkt.165 at 8.) This statement is fundamentally illogical as it undermines most conditions of release. For example, the same could be said of electronic monitoring – i.e., if the only way to keep a defendant from fleeing the jurisdiction is to place him on home confinement with electronic monitoring, then he is too great a flight risk to release.[3] The Court should readily dismiss this frivolous argument. Under the Bail Reform Act, if there are appropriate conditions for release, bail should be granted. The conditions collectively proposed in the previous and present bail applications provide ample assurance that Ms. Maxwell will be present at trial.

[3] Moreover, in an effort to further obfuscate the merits of Ms. Maxwell's bail application, the government desperately argues that funds for legal services, presently held in attorney escrow accounts, would be released and made available to support Ms. Maxwell as a fugitive. To suggest that defense counsel would become accomplices to a violation of a court order shows utter disrespect for Ms. Maxwell's defense team. In particular, New York counsel, who have spent the entirety of their legal careers practicing in this district and establishing well-respected reputations among the bench and bar, take umbrage at the government's callous assertion.

Conceded Problems Undermine the Strength of the Government's Case

As Ms. Maxwell's period of detention passes the nine-month mark, the government has continuously upgraded Ms. Maxwell from a "plain [ ] risk of flight" to a "substantial and actual risk of flight" to a "serious flight of risk" and now to an "extreme risk of flight." (Dkt. 165 at 1.) Ironically, her level of flight risk increases as the strength of government's case against her diminishes. Ms. Maxwell has challenged the strength of the government's case in pretrial motions pending before the Court. Among other things, Ms. Maxwell has persuasively argued that the Non-Prosecution Agreement entered into by Jeffrey Epstein in 2007, which immunizes "any potential co-conspirators of Epstein," bars Ms. Maxwell's prosecution in this case, and that the counts charging her with alleged sexual abuse are time-barred.

The government's response to Ms. Maxwell's pretrial motions shines further light of the weaknesses of its case. For example, the government concedes it cannot establish that either Ms. Maxwell or Epstein ever caused, or sought to cause, Accuser-3[4] to travel while she was a minor or that she was underage when she allegedly engaged in sex acts with Epstein. (*See* Opp.162-65 & fn. 57-58.)[5] Hence, her allegations cannot support the conspiracies charged in the Indictment, leaving the government with only two witnesses to prove the charges against Ms. Maxwell. More importantly, in connection with the government's response, it produced documents indicating that government prosecutors misled a federal judge to obtain evidence against Ms. Maxwell (*see, e.g.,*. Opp. Ex. 4-7) - a shocking revelation that undermines the viability of the perjury counts, not to mention the integrity of the entire

[4] Accuser-3 is identified in the Indictment as "Minor Victim-3."

[5] "Opp." references are to page numbers of the Government's Omnibus Memorandum in Opposition to Defendant's Pre-Trial Motions, dated February 26, 2021 and not yet publicly filed.

prosecution.

The ongoing review of discovery confirms the lack of evidence in support of the stale allegations in the indictment. Further, the government's concessions reveal that it failed to properly investigate the allegations of at least one of its three core witnesses. The passage of time continues to reveal information and lack of evidence that undermine the purported strength of the government's case.

Bail Must Be Granted

The detention of Ms. Maxwell on 25-year-old allegations – based on the lowest grade misdemeanor under New York Penal Law 130.55[6] – presented in a sensationalized indictment containing pictures to inflame the public and entice and feed the media frenzy[7] – is unwarranted in the face of the unique bail package before the Court. Relentless media coverage of Ms. Maxwell, which preceded and impacted the bringing of this prosecution, has increased significantly since her arrest and detention. Ms. Maxwell's continued detention – providing daily fodder for media for the past nine months–continues to severely undermine her presumption of innocence.

In the face of this enhanced bail package, the government's claim that Ms. Maxwell poses "an extreme risk of flight" rings hollow. The government urges the Court to apply a standard that defies the law - an absolute guarantee against all risks. *See United States v. Orta*, 760, F.2d 887, 888 n.4 (8th Cir. 1985) ("The legal standard required by the [Bail Reform] Act is one of reasonable assurances, not absolute guarantees."). Under the Bail

[6] Counts Two and Four allege violations of New York Penal Law § 130.55 - sexual abuse in the third degree - a class B misdemeanor punishable by maximum penalties of three months in jail or one year probation.

[7] What other purpose could be served by the inclusion of a picture of Ms. Maxwell and Jeffrey Epstein taken over a dozen years after the period of the conspiracy alleged and pictures of three high-value residences?

Reform Act, Ms. Maxwell must be released unless there are "no conditions" that would reasonably assure her presence. Here, the proposed bail package - uniquely strengthened by Ms. Maxwell's agreement to renunciate her foreign citizenship and have assets monitored by a retired federal district court judge - satisfies the actual governing standard.

To find there are absolutely no conditions to satisfy flight risk of a 59-year-old woman with no criminal history, who poses no danger to the community, who has made America her home for the past 30 years, and who has established strong roots and forged important connections with family and friends who reside here, is incredulous. The concerns regarding foreign citizenship and restraint of assets have been addressed. To say that renunciation of foreign citizenship and strict monitoring of assets by a retired federal district court judge does not suffice when combined with an eight-figure bond secured by real property and cash and the strictest terms of home confinement and electronic monitoring strains credulity. The government gains a strategic advantage each day Ms. Maxwell remains in custody – her case is tried daily in the court of public opinion based on allegations that are inadmissible in a court of law; the likelihood of seating jurors who are not implicitly biased against her is being severely jeopardized; her physical strength and concentration are becoming increasingly impaired by the conditions of her confinement; and she is being denied a full and fair opportunity to prepare her case for trial.[8]

[8] Ms. Maxwell continues to experience difficulty reviewing electronic discovery, including discs that can only be reviewed on the MDC computer but are not readable on that computer, and thousands of pages still not readable on either the MDC computer or the laptop. Her receipt of legal mail – including pretrial motions, responses and replies – are constantly delayed even after tracking information confirms delivery to the MDC. The visiting rooms in the East Building, where Ms. Maxwell is detained, have been reviewed by an HVAC expert retained by the Federal Defenders of New York and have been characterized as a "death trap." The MDC claims it is in the process of installing HEPA filters, a request long overdue in light of concerns regarding ventilation in legal visiting rooms raised early in the pandemic. The alternative – to meet in the open-area where social visiting had been conducted- affords no privacy for confidential attorney-client communication, especially under constant oversight by Ms.

Conclusion

The Court should grant bail for Ms. Maxwell on the extraordinary conditions proposed. Should the Court determine that additional conditions are necessary, Ms. Maxwell is willing to satisfy and abide by those terms as well.

Dated: March 16, 2021

Respectfully submitted:

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Maxwell's guards and a hand-held camera focused on both Ms. Maxwell and counsel. Further, confidential attorney-client communications conducted during video teleconferencing (VTC) are now further compromised by the repositioning of a camera with sensitive audio recording, putting a chill on privileged communication. During VTC conferences, counsel can hear conversation among the guards, so it is likely that the guards, who seem to be writing during those sessions, are able to hear discussions between Ms. Maxwell and counsel. Last night, prior to the filing of defense replies to Ms. Maxwell's pretrial motions, the MDC refused her request to speak with her lawyers to provide information bearing on those filings,. Such denial violates the BOP's Program Statement pertaining to providing legal calls upon request of pretrial inmates. *See* https://www.bop.gov/policy/progstat/7331_004.pdf at par. 24(c). The chronic difficulties related to Ms. Maxwell's review of the millions of documents of electronic discovery are continuing to negatively impact her ability to prepare for a trial that is only a few months away.

EXHIBIT A

WILLIAM JULIÉ
AVOCAT À LA COUR – ATTORNEY AT LAW

March 14th 2021

Re: Additional opinion on the extradition of nationals by the French government

1. This memorandum was written pursuant to a request from Olivier Laude, a partner at the French firm Laude Esquier Champey acting on behalf of Cohen & Gresser LLP as counsel for Ms Ghislaine Maxwell. The request was made in the context of ongoing bail proceedings involving Ms Maxwell in the United States of America (hereafter "USA"), where Ms Maxwell is being detained pre-trial on charges relating to her alleged role in sexual activities involving Jeffrey Epstein from 1994 to 1997.

2. In a previous opinion, I have outlined why French authorities could decide to execute an extradition request against a French citizen under the Extradition Treaty between the USA and France, without violating any superior norm of French and international law.

3. As I understand the defendant's French nationality continues to be regarded by the Court as a bar to her release pending trial, I am informed that the defendant is prepared to renounce French nationality under Article 23-4 of the French Civil Code, if the Court so requires.

4. In a letter to the Department of Justice dated 9 March 2021, the Head of the International Criminal Assistance Bureau of the French Ministry of Justice, Mr Philippe Jaeglé, asserts that the loss of French nationality after the criminal act which the person is alleged to have committed does not affect the rule against the extradition of nationals, as nationality must be assessed at the time of commission of the offence and not at the time of the extradition request.

5. This report was written to provide a counter opinion on this issue, in support of the proposition that the French government would be legally entitled to execute an extradition request against an individual who is no longer a French national.

6. The Ministry of Justice's assertion must be regarded as incorrect for three reasons:

   (i) It is not supported by the letter of the law;

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(ii) Nor is it supported by the spirit of the law;
(iii) Case law and precedents in fact suggest the opposite.

7. ***First, the Ministry's interpretation goes against the letter of the law.***

8. American extradition requests are principally governed by the Extradition Treaty between the USA and France of 23 April 1996 ("the Treaty") and the French Code of Criminal Procedure for matters not dealt with under the Treaty. [1]

9. Article 3(1) of the Treaty provides:

> "There is no obligation upon the Requested State to grant the extradition of *a person who is a national of the Requested State,* but the executive authority of the United States shall have the power to surrender a national of the United States if, in its discretion, it deems it proper to do so. The nationality of the person sought shall be the nationality of that person at the time the offense was committed".

10. Article 696-4 of the French Code of Criminal Procedure provides for the same rule, under similar wording:

> "Extradition shall not be granted:
> 1° *When the person claimed has French nationality*, the latter being assessed at the time of the offense for which extradition is requested"

11. Under a literal reading of these provisions, the nationality protection only applies where French authorities are faced with an extradition request against a person who is a French national *at the time of the extradition request*. Both the Treaty and the French Code of

[1] Other relevant international treaties include: the Agreement on Extradition between the United States of America and the European Union signed in Washington on 25 June 2003, and the Instrument Amending the Treaty of 23 April 1996 between the United States of America and France signed in the Hague on 30 September 2004.

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Criminal Procedure use the present tense ("a person who *is* a national of the Requested State"/"the person claimed *has* French nationality"), which can only mean that the extradition of a person is denied when that person *is* in fact a French national. If the person is no longer a French national at the time of the request, the provision does not apply.

12. Had these provisions been intended to apply in cases where the person has lost French nationality subsequent to the commission of the alleged crime, the texts would have expressly stated so or would at least have used both the present and the past tense to qualify the national affiliation of the requested person.

13. Furthermore, it is a well-known principle of legal interpretation across all jurisdictions that exceptions to rules must be construed strictly. The nationality ban being an exception to extradition, it must be interpreted in a restrictive manner and its application to a person who is no longer a French national must be rejected.

14. ***Second, the Ministry's interpretation goes against the spirit of the law***

15. The literal reading of Article 3 of the Treaty and Article 696-4 of the French Code of Criminal Procedure is further supported by the fact that these provisions were in fact not intended to apply in cases where the person sought has lost French citizenship, but only in cases where that person has *acquired* French citizenship subsequent to the commission of the alleged crime.

16. In other words, the rule that "nationality shall be assessed at the time of the offence for which extradition is requested" seeks to deny the extension of the benefit of French nationality to persons who have acquired French nationality after committing an offence, in order to avoid fraudulent nationality applications of offenders seeking to escape extradition.

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17. This concern over opportunistic nationality applications is precisely the justification of the rule mentioned in academic literature (see for example *Répertoire de droit pénal et de procédure pénale Extradition Pén. – Conditions de fond de l'extradition – Delphine Brach-Thiel–October 2018, §59*).

18. ***Third, the French Ministry of Justice's interpretation is contradicted by precedents and case law***

19. The French Ministry of Justice's interpretation finds no support in case law, as no case can be found where Article 696-4 of the French Code of Criminal Procedure was applied to protect a formerly French national from extradition.

20. Instead, precedents exist in which Article 696-4,1° of the French Code of Criminal Procedure was relied on by French authorities to execute an extradition request against an individual who had acquired French nationality *after* committing an offence, which is the natural use of this provision (for example, a ruling issued by the Criminal Chamber of the French Cour de cassation on 4 January 2006, n°05-86.258).

21. Although we have found no precedent where French authorities were faced with the *extradition* of a person who had lost French nationality, we have found cases where French authorities were faced with the *deportation* of a person who had lost French nationality. Both extradition and deportation allow for the removal of a person from French territory by the police and its surrender to the authorities of a third State, with the consent and cooperation of the authorities of that State.

22. The European Court of Human Rights (the "ECtHR") treats extradition and deportation analogously. More specifically, the ECtHR considers that the same human rights bars apply to all types of removal of a person from the territory of a State party ("*the Court considers that the question whether there is a real risk of treatment contrary to Article 3 in another State cannot depend on the legal basis for removal to that State. The Court's own case-law has shown that, in practice, there may be little difference between*

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extradition and other removals", ECtHR 12 April 2012, *Babar Ahmad and Others v. the United Kingdom*, no. 24027/07, §168).

23. France has no difficulty with deporting individuals who have lost French nationality by application of Article 25 of the Civil Code, which enumerates the list of crimes that may give rise to a deprivation of citizenship. For example, a dual French-Algerian citizen named Djamel Beghal was recently deported to Algeria after he was convicted of terrorist offences and subsequently deprived of his French nationality[2].

24. While in custody in France, Djamel Beghal was also convicted in absentia to a term of prison in Algeria, but his extradition initially seemed impossible, not because he used to be a French citizen, but because the case law of the ECtHR specifically prohibits State parties from deporting persons deprived of their nationality to the State of which they remain a national, when there is a risk of torture or degrading treatment[3]. Beghal was eventually deported to Algeria where he was arrested upon landing for the purpose of standing trial. In this case, the French government's decision to deprive Djamel Beghal of his French nationality was clearly intended to allow for his removal from France, whether through extradition or deportation, as both means of removal were conceivable at the time. Had there not been a risk of violation of the ECHR at the time of the Algerian extradition request, he may well have been extradited as opposed to deported a few years later, when that risk was eliminated.

25. In any case, the deportation of formerly French citizens shows that the loss of French nationality prevents any retroactive application of domestic provisions which are intended to protect French nationals, be it from deportation or extradition.

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[2] https://www.lemonde.fr/societe/article/2018/07/16/incertitude-sur-le-sort-de-l-islamiste-djamel-beghal-qui-sort-de-prison-lundi_5332053_3224.html

[3] ECtHR 3 December 2009, *Daoudi* v. France, application no. 19576/08.
or 4 sept. 2014, *Trabelsi c. Belgique*, req. n° 140/10, 17 janv. 2012, *Othman c. Royaume-Uni*, req. n° 8139/09. For more details, http://www.revuedlf.com/cedh/eloignement-des-etrangers-terroristes-et-article-3-de-la-convention-europeenne-des-droits-de-lhomme/

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26. In these circumstances, it cannot have been the intention of French lawmakers that Article 696-4 of the French Code of Criminal Procedure be construed as meaning that a person who has lost French nationality would still be entitled to be protected from extradition since the French government has on several occasions deported to third countries individuals who had been deprived of their French nationality following the commission of criminal offences.

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Exhibit L

Doc 169
Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

Defendant Ghislaine Maxwell has been indicted by a grand jury on charges of conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371; enticing a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. §§ 2422 and 2; conspiracy to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371; transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. §§ 2423 and 2; and two charges of perjury, in violation of 18 U.S.C. § 1623.

On July 14, 2020, the Court held a lengthy bail hearing and concluded that the Defendant was a clear risk of flight and that no conditions or combination of conditions would ensure her appearance. It therefore denied bail. On December 8, 2020, the Defendant filed a renewed motion for release on bail pending trial, which was entered into the public docket on December 14, 2020. Dkt. No. 96. On December 28, 2020, the Court denied that motion, concluding that the Defendant posed a risk of flight and that no combination of conditions could ensure her appearance. Dkt. Nos. 104, 106.

The Defendant then filed a third motion for release on bail on February 23, 2021. Dkt. No. 160. In this motion, the Defendant attempts to respond to the reasons that the Court

provided in denying bail, proposing two additional conditions to the ones she proposed in her second motion for bail. Specifically, she offers to renounce her French and British citizenship, and she also proposes to have her and her spouse's assets placed in a new account that will be monitored by a retired federal judge. *See* Dkt. No. 160 at 2.

As set forth below, the Court concludes that none of the Defendant's new arguments and proposals disturb its conclusion that the Defendant poses a risk of flight and that there are no combination of conditions that can reasonably assure her appearance. Thus, for substantially the same reasons that the Court denied the Defendant's first and second motions for release, the Court DENIES the Defendant's third motion for release on bail.

I. Background

On July 14, 2020, this Court held a hearing regarding the Defendant's request for bail. After a thorough consideration of all of the Defendant's arguments and of the factors set forth in 18 U.S.C. § 3142(g), the Court concluded that no conditions or combination of conditions could reasonably assure the Defendant's appearance, determining as a result that the Defendant was a flight risk and that detention without bail was warranted under 18 U.S.C. § 3142(e)(1). The Defendant has been incarcerated at the Metropolitan Detention Center since that time.

The Defendant renewed her motion for release on bail on December 8, 2020. The Court again denied the Defendant's motion. In doing so, the Court explained that none of the Defendant's new arguments materially impacted its conclusion that the Defendant posed a risk of flight. It noted that the charges, which carry a presumption of detention, are serious and carry lengthy terms of imprisonment if convicted; the evidence proffered by the Government, including multiple corroborating and corroborated witnesses, remained strong; the Defendant's substantial resources and foreign ties created considerable uncertainty and opportunities for

escape; and that the Defendant's lack of candor regarding her family ties and financial situations raised serious doubts as to her willingness to comply with any conditions imposed by the Court. *See* Dkt. No. 106.

On February 23, 2021, the Defendant filed a third motion for release on bail. Dkt. No. 160 ("Def. Mot."). The Government opposed the Defendant's motion on March 9, 2021. Dkt. No. 165 ("Gov't Opp'n"). The Defendant filed her reply under temporary seal on March 16, 2021.

II. Legal Standard

The parties dispute whether the divestiture of jurisdiction rule precludes this Court from granting the Defendant's third bail motion while Defendant's bail appeal is pending. *See* Gov't Opp'n at 2–3; Reply at 2–3; *see also United States v. Rodgers*, 101 F.3d 247, 251 (2d Cir. 1996) ("As a general matter, 'the filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.'") (citation omitted). Under Rule 37(a) of the Federal Rules of Criminal Procedure, however, the Court unquestionably has authority to defer considering the motion, deny the motion, or state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue. Fed. R. Crim. P. 37(a). Because the Court denies the Defendant's motion, it does not resolve the question of whether it would have jurisdiction to grant it.

Pretrial detainees have a right to bail under the Eighth Amendment to the United States Constitution and under the Bail Reform Act, 18 U.S.C. § 3141, *et seq.* The Bail Reform Act requires that a court release a defendant "subject to the least restrictive further condition, or combination of conditions, that [it] determines will reasonably assure the appearance of the

person as required and the safety of any other person and the community." 18 U.S.C. § 3142(c)(1)(B). The Court may order that the defendant be held without bail only if, after considering the factors set forth in 18 U.S.C. § 3142(g), the Court concludes 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." 18 U.S.C. § 3142(e)(1).

After a court has made an initial determination that no conditions of release can reasonably assure the appearance of the Defendant as required, the Bail Reform Act allows the Court to reopen the bail hearing if "information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue" of whether pretrial detention is warranted. 18 U.S.C. § 3142(f). The Court is not required to do so if it determines that any new information would not have a material bearing on the issue. *See United States v. Raniere*, No. 18-CR-2041 (NGG) (VMS), 2018 WL 6344202, at *2 n.7 (E.D.N.Y. Dec. 5, 2018) (noting that "[a]s the court has already held one detention hearing, it need not hold another"); *United States v. Havens*, 487 F. Supp. 2d 335, 339 (W.D.N.Y. 2007) (electing not to reopen a detention hearing because the new information would not have changed the court's decision to detain the defendant until trial). In addition, the Court may also revisit its own decision pursuant to its inherent authority, even when the circumstances do not match § 3142(f)'s statutory text. *See, e.g.*, *United States v. Rowe,* No. 02-CR-756 (LMM), 2003 WL 21196846, at *1 (S.D.N.Y. May 21, 2003) (noting that "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. Petrov,* No. 15-CR-66 (LTS), 2015 WL 11022886, at *3 (S.D.N.Y. Mar. 26, 2015) (noting the "Court's inherent authority for reconsideration of the Court's previous bail decision").

If, as here, there is probable cause to find that the defendant committed an offense specifically enumerated in § 3142(e)(3), a rebuttable presumption arises "that no condition or combination of conditions will reasonably assure" the defendant's appearance or the safety of the community or others. 18 U.S.C. § 3142(e)(3). In such circumstances, "the defendant 'bears a limited burden of production . . . to rebut that presumption by coming forward with evidence that he does not pose a danger to the community or a risk of flight.'" *United States v. English*, 629 F.3d 311, 319 (2d Cir. 2011) (quoting *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001)); *see also United States v. Rodriguez*, 950 F.2d 85, 88 (2d Cir. 1991) ("[A] defendant must introduce some evidence contrary to the presumed fact in order to rebut the presumption."). Nonetheless, "'the government retains the ultimate burden of persuasion by clear and convincing evidence that the defendant presents a danger to the community,' and 'by the lesser standard of a preponderance of the evidence that the defendant presents a risk of flight.'" *English*, 629 F.3d at 319 (quoting *Mercedes*, 254 F.3d at 436); *see also United States v. Martir*, 782 F.2d 1141, 1144 (2d Cir. 1986) ("The government retains the burden of persuasion [in a presumption case]."). Even when "a defendant has met his burden of production," however, "the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court." *United States v. Mattis*, 963 F.3d 285, 290–91 (2d Cir. 2020).

III. Discussion

The Defendant bases her third motion for bail on the Court's inherent powers to review its own bail decisions, arguing that the new conditions she proposes warrant reconsideration of the Court's earlier rulings. *See* Def. Mot. at 4. She also argues that the strength of the Government's case is diminished in light of the arguments she advances in her pre-trial motions, which are currently pending before the Court. *Id.* at 7. Having considered those arguments, the

Court's view has not changed. The Court again concludes that the Government has shown by a preponderance of the evidence that the Defendant presents a risk of flight and that there are no set of conditions, including the Defendant's third set of proposed conditions, that are sufficient to reasonably assure her appearance. The presumption in favor of detention, the weight of the evidence, and the history and characteristics of the Defendant all continue to support that conclusion. The Defendant's proposed conditions do not alter the Court's determination.

A. The Court's assessment of the 18 U.S.C. § 3142(g) factors has not changed

To begin with, the presumption in favor of detention continues to apply with equal force. *See* Dkt. No. 106 ("Dec. Op.") at 7–8. And though the Court again concludes that the Defendant has met her burden of production, the presumption "remains a factor to be considered among those weighed by the district court." *Mercedes*, 254 F.3d at 436 (quoting *Martir*, 782 F.2d at 1144). The Court is mindful "that Congress has found that these offenders pose special risks of flight, and that 'a strong probability arises' that no form of conditional release will be adequate to secure their appearance." *Martir*, 782 F.2d at 1144 (citation omitted).

The Court's analysis of the 18 U.S.C. § 3142(g) factors also remains unchanged. Because the nature and circumstances of the offenses charged include crimes involving a minor victim, the first 18 U.S.C. § 3142(g) factor continues to weigh strongly in favor of detention. And the Court remains of the opinion that the Defendant does not pose a danger to any person or to the community. The fourth § 3142(g) factor thus weighs against detention.

With respect to the second § 3142(g) factor, none of the Defendant's new arguments alter the Court's conclusion as to the weight of the evidence. The Defendant argues that the pre-trial motions "raise serious legal issues that could result in dismissal of charges, if not the entire indictment," and she contends that "[t]hese motions cast substantial doubt on the alleged strength

of the government's case and warrant granting bail on the conditions proposed." Def. Mot. at 7. Those motions became fully briefed one week ago and are now pending before this Court. The Government strenuously contests each of the motions and the Court has not yet adjudicated them. Without prejudging the merits of any of those pending motions and mindful 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. *See* Dec. Op. at 9–10.

The Court's assessment of the Defendant's history and characteristics has not changed. *See* Dec. Op. at 10–16. The Defendant continues to have substantial international ties, familial and personal connections abroad, substantial financial resources, and experience evading detection. *Id.* at 10–11. And the Court's concerns regarding the Defendant's lack of candor regarding her assets when she was first arrested have also stayed the same. As the Court emphasized in its denial of the second motion for release on bail, the discrepancies between the information presented to the Court and to Pretrial Services in July 2020 and the information presented to the Court in December 2020 raised significant concerns about candor. *See* Dec. Op. at 16. There remains considerable doubt as to the Defendant's willingness to abide by any set of conditions of release. *Id.* While there continue to be certain mitigating circumstances cutting in the opposite direction, including the Defendant's family ties in the United States, these do not overcome the weight of the considerations that lean in favor of continued detention.

As a result, none of the evidence or arguments presented in this third motion for bail alter the Court's assessment of the 18 U.S.C. § 3142(g) factors. While the fourth factor continues to favor release, the first three factors and the presumption of detention all support the conclusion

that the Defendant poses a significant risk of flight. Thus, the Court again concludes that there are no conditions of release that will reasonably assure her appearance in future proceedings.

B. Pretrial detention continues to be warranted

The thrust of the Defendant's argument in her third motion for bail is that the two new proposed conditions vitiate the Court's concerns regarding the risk of flight. The Defendant first offers to renounce her French and British citizenship. Def. Mot. at 2. And she also proposes to have most of her and her spouse's assets placed in a new account that will be monitored by a retired federal judge, who would function as an asset monitor and will have co-signing authority over the account. *Id.* Those conditions are offered in addition to the bail package she proposed in December. *See* Dec. Op. at 16–17; *see also* Def. Mot. at 2. The new bail package does not disturb the Court's conclusion that the Government has carried its burden of showing that these conditions are insufficient to mitigate the flight risks, and the Court again determines that no set of conditions—including the two new ones—can reasonably assure her future appearance.

The Court begins with the Defendant's offer to renounce her French and United Kingdom citizenship. She notes that she can renounce her UK citizenship "immediately upon granting of bail," and she informs the Court that "[t]he process of renouncing her French citizenship, while not immediate, may be expedited." Def. Mot. at 4. As the Government notes, the offer is of unclear validity, and the relevance and practical impact of the renunciations is, at best, unclear. *See* Gov't Opp'n at 5. With respect to her offer to renounce her French citizenship, the Court is again confronted with dueling opinions on the correct interpretation of French law. The Government relies on the position of the head of the International Criminal Assistance Bureau of the French Ministry of Justice, who argues that "the fact that the wanted individual is a French national constitutes an insuperable obstacle to his/her removal," and that "[a]s long as said

nationality is assessed at the time the offense was committed, any loss of nationality subsequent to said offense has no bearing upon the removal proceedings and shall not supersede said assessment of nationality."[1] Gov't Opp'n, Ex. A at 2. The Defendant, meanwhile, relies on the opinion of a French legal expert who argues that nationality is assessed at the time of the extradition request. *See* Reply, Ex. A ¶ 11. The Defendant's expert concedes that there is no case law addressing this precise issue. *Id.* ¶ 21.

Exacerbating the uncertainty is the fact that the relevant legal materials also lend themselves to multiple interpretations. For instance, Article 3(1) the Extradition Treaty between the United States and France of April 23, 1996 provides that "[t]here is no obligation upon the Requested State to grant the extradition of a person *who is a national of the Requested State*, but the executive authority of the United States shall have the power to surrender a national of the United States if, in its discretion, it deems it proper to do so. *The nationality of the person sought shall be the nationality of that person at the time the offense was committed.*" *See* Reply, Ex. A ¶ 9 (emphasis added)). Article 694-4 of the French Code of Criminal Procedure similarly provides that "Extradition shall not be granted . . . [w]hen the person claimed has French nationality, the latter being assessed at the time of the offense for which extradition is requested."[2] *Id.* ¶ 10; *see also* Gov't Opp'n, Ex. A at 2. Thus, there is considerable uncertainty as to the relevance of the Defendant's offer of renunciation of her French citizenship to her ability to frustrate, if not entirely bar, extradition. The Court's assessment of the risks largely

[1] The Court cites the translated version of the letter, though the original letter is in French.
[2] Here, there are minor discrepancies between the two sides' respective translations. The translated letter from the Ministry of Justice cites Article 694-4 as reading, "When the individual claimed to have French citizenship, said citizenship having been assessed at the time of the offense on the basis of which removal is being requested." Gov't Opp'n, Ex. A at 2.

parallel those that the Court articulated when the Defendant proposed signing an extradition waiver. *See* Dec. Op. at 12–13.

Similar doubts exist as to the Defendant's offer to renounce her UK citizenship. The Court is persuaded by the Government's arguments that even if the Defendant were to renounce her UK citizenship, she would still likely be able to delay or resist extradition from the UK. *See* Gov't Opp'n at 6–7. And for largely similar reasons, the Court again concludes that the proposed conditions do not meaningfully diminish the Court's concerns regarding the Defendant's ability to flee and to frustrate or impair any subsequent extradition attempts. The possibility that the Defendant could successfully resist or forestall extradition heightens the Defendant's incentive to flee.

To summarize, the Defendant's willingness to renounce her French and UK citizenship does not sufficiently assuage the Court's concerns regarding the risk of flight that the Defendant poses. Considerable uncertainty regarding the enforceability and practical impact of the renunciations cloud whatever relevance they might otherwise have to the Court's assessment of whether the Defendant poses a risk of flight. *See United States v. Cohen*, No. C 10-00547 (SI), 2010 WL 5387757, at *9 n.11 (N.D. Cal. Dec. 20, 2010). And that same uncertainty—and the possibility that she will be able to successfully resist, or at least delay, extradition—incentivizes flight, particularly because of the Defendant's substantial international ties.

Nor does the second proposed condition materially alter the Court's determination that no condition or combination of conditions can reasonably assure the Defendant's appearance. The Defendant proposes to have a retired federal judge provide oversight authority over her financial affairs, and, if granted, he would have the authority to restrain, monitor, and approve disbursement of assets requiring his signature. *See* Reply at 5. The Court continues to have

concerns about whether the full extent of the Defendant's assets have been disclosed in light of the lack of transparency when she was first arrested. But the Court assumes, for purposes of resolving this motion, that the financial report that it reviewed in December is accurate and that it accounts for all of the Defendant's and her spouse's assets. *See* Dec. Op. at 16–17.

The monitorship condition does not reasonably assure the Defendant's future appearance, even when viewed in combination with the rest of the Defendant's bail package. The Defendant would continue to have access to substantial assets—certainly enough to enable her flight and to evade prosecution. These include the $450,000 that the Defendant would retain for living expenses and any future salaries for her or her spouse, along with other assets, including jewelry and other chattels, that are potentially worth hundreds of thousands of dollars. *See* Def. Mot. at 5–6; *see also* Dkt. 97, Ex. O at 9. While those amounts may be a small percentage of the Defendant's total assets, they represent a still-substantial amount that could easily facilitate flight. When combined with the Court's weighing of the § 3142(g) factors and the presumption of detention, the Court concludes that the proposed restraints are insufficient to alter its conclusion that no combination of conditions can reasonably assure her appearance.

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. As a result, the Court again determines that "no condition or combination of conditions will reasonably assure the appearance of" the Defendant, and it denies her motion for bail on this basis. 18 U.S.C. § 3142(e)(1).

IV. Conclusion

Defendant Ghislaine Maxwell's third motion for release on bail, Dkt. No. 160, is DENIED. The parties are ORDERED to meet and confer and propose and justify any redactions to the Defendant's reply brief by March 24, 2021. If they conclude that redactions are unnecessary, the Defendant is ORDERED to docket the unredacted version of the brief by March 24, 2021.

SO ORDERED.

Dated: March 22, 2021
New York, New York

ALISON J. NATHAN
United States District Judge

Exhibit M

Doc. 159
Ghislaine Maxwell's Letter Regarding MDC Conditions

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February 16, 2021

Honorable Alison J. Nathan
United States District Court
United States Courthouse
40 Foley Square
New York, NY 10007

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

Dear Judge Nathan:

The government's recent letter regarding MDC conditions (Dkt.158) essentially repeats the same points it made in defense of the MDC's request that the Court vacate its order directing the MDC to permit Ms. Maxwell to use a laptop on weekends and holidays. We appreciate the Court's concern regarding Ms. Maxwell's opportunity to review discovery and the extent to which she is required to undergo searches. The government's letter, however, does not include the concerns defense counsel has reported to MDC Legal during the past couple of months. In addition, the letter incorrectly states that legal calls are available on Saturdays. Such requests by counsel have been denied.

By ignoring the myriad other issues reported by counsel, the government's letter misrepresents Ms. Maxwell's conditions of confinement. Ms. Maxwell does not have access to daily discovery review for the entirety of the 13 hours. The vagaries and delays of moving her the 50 feet or so from the isolation cell to the day room are a large part of the challenge.

The number of searches is also not correct. Ms. Maxwell is searched on every move, including to the empty concrete space, adjacent to the day room, used for recreation. Currently, she is subject to a minimum of four pat down searches a day if she goes to rec, and five pat down searches on the day of her weekly body scan. Since July 6th, Ms. Maxwell has been physically searched approximately 1400 times, including pat down searches, metal wand searches, mouth, hair and ear searches (posing additional health risks during COVID), and upwards of 60 body scans. In addition, there have been hundreds of physical searches of her isolation cell, locker, legal papers, and personal effects. No contraband has ever been found.

We take issue with MDC's assessment that "the searches are all necessary for the safety of the institution and the defendant." Ms. Maxwell is under 24-hour surveillance by two to six guards and approximately 18 cameras, not including the hand-held camera, focused on her throughout the areas in which she is moved and confined. Ms. Maxwell poses no danger to anyone. Her restrictive conditions, searches, and constant surveillance correlate directly to BOP negligence resulting in the death of Jeffrey Epstein.

As the government states, a flashlight is pointed at the ceiling of her isolation cell every 15 minutes, from approximately 9:30 pm to 6:30 am. It is hard to verbally convey the power of a light that bounces off a concrete ceiling in a six-by-nine-foot concrete box into Ms. Maxwell's eyes, disrupting her sleep and ability to have any restful night. The attenuating effects of sleep deprivation are well documented.

Ms. Maxwell continues to be at the mercy of a revolving group of security officers who are used to guarding hundreds of inmates but now focus their undivided attention exclusively on one respectful, middle-aged female pretrial detainee. Recently, out of view of the security camera, Ms. Maxwell was placed in her isolation cell and physically abused during a pat down search. When she asked that the camera be used to capture the occurrence, a guard replied "no." When Ms. Maxwell recoiled in pain and when she said she would report the mistreatment, she was threatened with disciplinary action. Within a week and while the same team was in charge, Ms. Maxwell was the subject of further retaliation for reporting the abuse: a guard ordered Ms. Maxwell into a shower to clean, sanitize, and scrub the walls with a broom. Ms. Maxwell's request to have the camera record the guard alone with her in the confined space was again denied.

Ms. Maxwell spends an increasing amount of time in her isolation cell because her daily removal is delayed. Her movement within that cell is restricted. Despite claims by MDC Legal to the contrary, guards forbid Ms. Maxwell from standing in certain areas of her six-by-nine-foot cell: she is not allowed to stand to the left or right of the toilet, in either corner of the isolation cell, and within two feet from the door. This directive encroaches on an already restricted and confined area and limits her movement and use to the little space that remains.

Ms. Maxwell continues to have serious problems with the food provided to her. She has repeatedly not been provided some or all parts of a meal. For the duration of her detention, she has never received a properly heated meal. Her food, contained in plastic specifically contra-indicated for use in a microwave, is designed to be heated in a thermal oven. The old microwave oven used for Ms. Maxwell's food either does not defrost the food or disintegrates it and melts the plastic container, rendering the food inedible. While guards finally acknowledged serious problems with the food, they continued to microwave Ms. Maxwell's food, rendering the food inedible and dangerous for consumption and leaving Ms. Maxwell with no meal and no replacement. Late last week, guards informed Ms. Maxwell that going forward her food will be heated in a thermal oven, like that of all other inmates. While this may be an improvement, it does little to correct seven months of deprivation impacting her nutrition and detrimental to her health.

Recently there have been problems with odorous and non-palatable tap water. The water in the isolation cell was clouded with heavy particulates; the water in the day room was brown. Requests by Ms. Maxwell and counsel to provide her bottled water or permit her to purchase water were denied. In addition, her legal mail does not arrive in a timely manner, daily newspapers arrive up to six weeks late, her emails have been prematurely deleted from the BOP system, and she has arrived late for VTC calls.

It is impossible to overstate the deleterious effect of the conditions under which Ms. Maxwell is detained. Upon arrival at the MDC seven months ago, she was placed on suicide watch though no competent medical professional deemed her in any manner suicidal, nor has any psychologist or medical staffer ever found her to be suicidal at any time during her detention. For weeks she was deprived of legal material, the ability to use a telephone to make personal calls, and the opportunity to exercise and shower. Clearly, this was an effort to avoid a recurrence of the BOP's negligence regarding Jeffrey Epstein's death. Contrary to the way she is hyper-monitored, Ms. Maxwell is classified with the standard CC1-Mh designation: inmate with no significant mental health care.

The overall conditions of detention have had a detrimental impact on Ms. Maxwell's health and overall well-being; and she is withering to a shell of her former self – losing weight, losing hair, and losing her ability to concentrate. In addition to the many difficulties impacting her review of electronic discovery materials, the over-management and stress are impacting her stamina and effectiveness in preparing her defense and conferring with counsel.

Having been incarcerated in de facto solitary confinement for 225 days and monitored by two to six guards 24 hours a day with a handheld camera dedicated to capturing her every move, except when it would record improper conduct on the part of the guards, it is not surprising that Ms. Maxwell feels she is detained under the control of the Bureau of "*Pretrial Punishment.*"

Very truly yours,

Bobbi C. Sternheim
BOBBI C. STERNHEIM

cc: All counsel

Exhibit N

Doc. 306
United States v. Dashawn Robertson,
Case Number 17-cr-02949-MV1, District of New Mexico
Memorandum Opinion and Order

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

No. 17-CR-02949-MV-1

v.

DASHAWN ROBERTSON,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on the Defendant Dashawn Robertson's Motion to Reconsider Motion for Review of Detention Order and Immediate Release. Doc. 274. The government filed a response in opposition [Doc. 282] and Mr. Robertson filed a reply [Doc. 284]. The United States Probation Office (USPO) also filed two memorandums addressing Mr. Robertson's release. Docs. 277 and 287. The Court then discussed the motion at length with the parties and the USPO at the February 4, 2021 pretrial conference in this case. Doc. 297 at 4–6. After carefully considering the nature and circumstances of the offenses charged, the weight of the evidence against Mr. Robertson, his history and characteristics, and the potential danger to the community posed by his release, the Court found that a combination of extremely strict conditions could reasonably assure Mr. Robertson's appearance in court and the safety of the community, as required by 18 U.S.C. § 3142(f). *Id.* The Court also found that Mr. Robertson's release was necessary to allow him to effectively prepare for his upcoming trial under 18 U.S.C. § 3142(i) because the ongoing COVID-19 pandemic has significantly hampered his ability to meet or communicate with his attorneys. *Id.* The Court accordingly ordered Mr. Robertson to be released under strict conditions to La Pasada Halfway House on February 5, 2021. *See* Docs. 300 and 301.

In this Memorandum Opinion and Order, the Court explains its release analysis under the Bail Reform Act, 18 U.S.C. § 3142. It also explains its decision to deny the government's Amended Emergency Motion for Reconsideration and Stay of Release Order. Doc. 298.

BACKGROUND

Mr. Robertson is charged in a three-count superseding indictment with Obstruction of Justice by Retaliating Against a Witness, Victim, or Informant, in violation of 18 U.S.C. § 1513(a)(1)(B); Possessing and Discharging a Firearm in Furtherance of a Crime of Violence, in violation of 18 U.S.C. § 924(c); and Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. §§ 922(g)(1) and 924. Doc. 86. The charges arise from his alleged act of shooting an individual named D.S. eight times in the early morning hours of September 12, 2017 in retaliation for D.S.'s cooperation with the federal government in a criminal case two years earlier. *See* Doc. 38 at 2. Mr. Robertson pled not guilty to the charges at an arraignment held on December 11, 2017 [Doc. 9] and a trial in the case will be set for April 5, 2021, about two months from today.

Although presumed innocent of all charges, Mr. Robertson has been in pretrial detention in this case for over three years. He was arrested on December 11, 2017 and was ordered detained the same day by Magistrate Judge B. Paul Briones after the Magistrate Judge found that no condition or combination of conditions of release would reasonably assure the safety of the community or his appearance in court. Doc. 12. Extensive pretrial litigation followed until the case was eventually ready and set for trial on March 23, 2020. Doc. 63. The Court held a pretrial conference on March 10, 2020 and testimonial writs were issued. Docs. 127 and 143. Just days later, however, the devastating extent of the global COVID-19 pandemic became clear and the Chief Judge of the United States District Court for the District of New Mexico suspended all civil and criminal jury trials set for the following month. *See In the Matter of: Court Operations in*

Light of the Coronavirus Outbreak, 20-MC-00004-9 (D.N.M. Mar. 13, 2020) (Johnson, C.J.). Almost a full year later, jury trials remain suspended in the District of New Mexico. *See In the Matter of: Superseding Administrative Order 20-MC-00004-49*, 21-MC-00004-04 (D.N.M. Jan. 15, 2021) (Johnson, C.J.) (continuing the suspension of all civil and criminal jury trials through at least February 28, 2021).

In the intervening 11 months, Mr. Robertson has remained in custody. During that time period, the Court set and then continued several trial dates due to the pandemic, including dates in December 2020 and February 2021. *See, e.g.,* Doc. 271. Mr. Robertson's trial will now be reset for April 5, 2021, and the Court is hopeful that he will finally get his day in court after the extreme and unprecedented delay he has endured. Complicating matters, however, is the fact that the pandemic and the resulting passage of time has led to a recent and significant change in Mr. Robertson's defense team: both of his original attorneys withdrew from the case in January of this year. Doc. 295. As a result, the attorneys with which he will be going to trial in two months were appointed in September 2020 and January 2021. Docs. 197 and 293. Although the Court would not have granted the appointments if it were not sure that Mr. Robertson's new attorneys would be ready for trial this April, they nevertheless face the daunting task of earning their client's trust, preparing for trial, and reviewing three years' worth of litigation in a matter of months.

Mr. Robertson first asked the Court to consider his release in July of last year. Doc. 181. He argued that his continued pretrial detention posed a risk to his health because his compromised immune system makes him especially vulnerable to serious illness or death from COVID-19. *Id.* at 5. He also argued that there were conditions of release that would satisfy the requirements of the Bail Reform Act, including the designation of his father as a third-party custodian. *Id.* at 9–10. The Court took up the motion at a status conference held on September 11, 2020. It explained

that it was "very concerned" about the amount of time Mr. Robertson had been in custody up to that point, especially given that the already-minimal rehabilitative and mental health services in jail had been further reduced by the pandemic. Transcript of September 11, 2020 Status Conference at 43–44.[1] The Court nevertheless found that it did not have any conditions available that could reasonably assure Mr. Robertson's appearance or the safety of the community given his failure to comply with conditions of release in the past. *Id.* at 44–45. The Court also noted that while it was concerned about Mr. Robertson's ability to meet with his attorneys to prepare for trial during the pandemic, it had been informed that the defense team would be able to meet in conference rooms in the federal courthouse in Albuquerque. *Id.* at 45.

Mr. Robertson now asks the Court to reconsider its earlier decision denying him pretrial release. Doc. 274. As grounds for reconsideration, he points to the additional unforeseen trial continuances following the September status conference as well as new placement options, including the grandmother of his children and La Pasada Halfway House. *Id.*; *see also* Doc. 284 at 2–3. The government opposes the requested reconsideration. Doc. 282.

DISCUSSION

I. Reconsideration is Proper on the Basis of New Evidence Previously Unavailable.

As an initial matter, Mr. Robertson has raised legitimate reasons for the Court to reconsider its earlier release decision. As the Court has previously explained, it is well-established in this Circuit that although the Federal Rules of Criminal Procedure do not expressly authorize a motion for reconsideration, such motions are proper in criminal cases. *See United States v. Christy*, 739 F.3d 534, 539 (10th Cir. 2014). A district court thus may amend its interlocutory orders prior to entry of final judgment. *See, e.g.*, *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir.

[1] All references to the transcript are to the draft copy.

1991) ("The Federal Rules of Civil Procedure do not recognize a 'motion to reconsider.' Instead, the rules allow a litigant subject to an adverse judgment to file either a motion to alter or amend the judgment . . . or a motion seeking relief from the judgment."); *Trujillo v. Bd. of Educ. of Albuquerque Pub. Sch.*, 212 F. App'x 760, 765 (10th Cir. 2007) (unpublished) ("A district court has discretion to revise interlocutory orders prior to entry of final judgment."). Hence, "[w]hen a party seeks to obtain reconsideration of a non-final order, the motion is considered 'an interlocutory motion invoking the district court's general discretionary authority to review and revise interlocutory rulings prior to entry of final judgment.'" *Wagner Equip. Co. v. Wood*, 289 F.R.D. 347, 349 (D.N.M. 2013) (quoting *Wagoner v. Wagoner*, 938 F.2d 1120, 1122 n.1 (10th Cir. 1991)). The Court's authority, then, is sustained by the pragmatic reality that a "district court should have the opportunity to correct alleged errors in its dispositions." *Christy*, 739 F.3d at 539. Consequently, the district court enjoys "considerable discretion in ruling on a motion to reconsider." *Federated Towing & Recovery, LLC v. Praetorian Ins. Co.*, 283 F.R.D. 644, 651 (D.N.M. 2012) (citing *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997)).

The scope of reconsideration, however, is narrowly cabined and far more limited than in an ordinary appeal. That is, a motion to reconsider is an "inappropriate vehicle[] to reargue an issue previously addressed by the court when the motion merely advances new arguments, or supporting facts which were available at the time of the original motion." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (citation omitted). Rather, "[g]rounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." *Id.*

Here, several pieces of previously unavailable evidence justify the request for reconsideration. *Servants of Paraclete*, 204 F.3d at 1012. First, when the Court denied Mr.

Robertson release in September of last year, it believed that he would only remain in pretrial detention for three additional months until a December 7, 2020 trial date. Doc. 194. As bad as the pandemic had been to that point, the Court did not expect the federal judiciary to remain in a state of near total suspension for another six months, requiring the trial to be continued twice more to the current April 5, 2021 trial date. Second, when the Court denied Mr. Robertson release last September, it was under the impression that he would be able to meet with his attorneys in person in conference rooms at the Albuquerque courthouse, mitigating the Court's concerns about the defense team's ability to effectively prepare for trial. *See supra* at 4. The Court's impression on that point turned out to be incorrect: due to concerns about inmates meeting with attorneys and then bringing COVID-19 back into the jails, the idea of unrestricted attorney-client meetings at the Albuquerque courthouse was ultimately rejected. Third, the Court is now able to impose significantly stricter conditions of release because of its ability to release Mr. Robertson to La Pasada Halfway House, an option with which it was not presented last September.

II. Mr. Robertson's Release to La Pasada Halfway House Under Extremely Strict and Carefully Tailored Conditions Will Reasonably Assure His Appearance and the Safety of the Community Under 18 U.S.C. § 3142(e).

On the merits, the Court has thoroughly considered the parties' arguments, the UPSO's recommendations, Mr. Robertson's Form 13 Presentence Investigation Report (PSR) and the information contained therein about his criminal history and prior performance on release, and the applicable law. Although the government's concerns are understandable, the Court ultimately believes that it can reasonably assure Mr. Robertson's appearance and the safety of the community by releasing him to La Pasada Halfway House under a number of extremely strict and carefully tailored conditions.

Under 18 U.S.C. § 3142(e), a defendant must be released pending trial unless, after a

hearing, a judicial officer finds that no condition or combination of conditions will reasonably assure the defendant's appearance as required and the safety of any other person and the community. 18 U.S.C. § 3142(e)(1). The government bears the burden of proving flight risk by a preponderance of the evidence and dangerousness to any other person or the community by clear and convincing evidence. *United States v. Cisneros*, 328 F.3d 610, 616 (10th Cir. 2003). A district court's review of a Magistrate Judge's order of detention is de novo. *See Cisneros*, 328 F.3d at 616.

Section 3142(e)(2) creates a rebuttable presumption that no condition or combinations of conditions exist to reasonably assure a defendant's appearance or the safety of the community where there is probable cause to believe the defendant violated 18 U.S.C. § 924(c). *See* 18 U.S.C. § 3142(e)(3)(B). As the Tenth Circuit has held:

> Once the presumption is invoked, the burden of production shifts to the defendant. However, the burden of persuasion regarding risk-of-flight and danger to the community always remains with the government. The defendant's burden of production is not heavy, but some evidence must be produced. Even if a defendant's burden of production is met, the presumption remains a factor for consideration by the district court in determining whether to release or detain.

United States v. Stricklin, 932 F.2d 1353, 1354–55 (10th Cir. 1991).

Here, although Mr. Robertson is subject to a presumption of detention due to his § 924(c) charge, *see* Doc. 86 at 1–2, the Court finds that he has successfully rebutted the presumption. He has produced evidence, for example, that he is not a danger to the community nor a flight risk because he voluntarily turned himself in on the instant offense, despite consistently maintaining his innocence and knowing the extremely long prison sentence he faced if convicted. Doc. 274 at 5. He has also produced evidence that he will not flee the jurisdiction due to his family's presence here. *Id.* And he has produced evidence that his placement at La Pasada Halfway House is a condition of release that could reasonably assure his appearance and the safety of the community.

Doc. 284 at 2–3. Mr. Robertson has met his burden of production and has rebutted the presumption in § 3142(e)(3)(B) that no condition or combination of conditions could meet the requirements for his release.

Section 3142(g) then lays out the following factors for courts to consider: (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of § 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; and (4) the nature and seriousness of the danger to any person or community that would be posed by the defendant's release. 18 U.S.C. § 3142(g).

The Court finds that although some of these factors weigh against Mr. Robertson's release, they do not foreclose relief under the strict conditions the Court has imposed. With regard to the nature and circumstances of the offenses charged, they are extremely serious and involve Mr. Robertson allegedly shooting a victim, D.S., in retaliation for his cooperation with the government in an earlier criminal case. As the Court stated at the November 4, 2021 pretrial conference, it takes Mr. Robertson's charges extremely seriously because the ability of witnesses to come forward and safely provide information to the government, and to the Court, is at the core of our criminal justice system.

With regard to the weight of the evidence against Mr. Robertson, it is mixed. On the one hand, D.S. positively identified Mr. Robertson as the person who shot him and at least one other witness, N.F., has testified that Mr. Robertson made incriminating statements in the weeks prior to the shooting. On the other hand, it appears that there were many people present at the time and place of the shooting and there is evidence that D.S.'s identification of Mr. Robertson could have

been influenced by the suggestion of others, including his girlfriend at the time and the police who came to question him in the hospital.

With regard to Mr. Robertson's history and characteristics, his history of violating past conditions of release is a source of concern, as the Court noted when denying him release last September. *See supra* at 4. More specifically, Mr. Robertson's Form 13 PSR notes several instances in which his probation was revoked for failure to comply with conditions of release. Doc. 188 at 8–10. Mr. Robertson also has several prior convictions. *Id.* However, as the defense has pointed out, none of Mr. Robertson's probation revocations appear to have involved him absconding; although he has convictions for illegal firearm possession, he does not have any convictions for violent offenses; and he turned himself after being charged in the instant case. *Id.*; *see also* Doc. 274 at 4–5.

Finally, with regard to the nature and seriousness of the danger that would be posed to any person or the community by Mr. Robertson's release, the Court understands the government's concerns given the frightening allegations in this case. Mr. Robertson is presumed innocent on all charges until proven guilty, however. *See* 18 U.S.C. § 3142(j) ("Nothing in this section shall be construed as modifying or limiting the presumption of innocence."). Presuming Mr. Robertson's innocence in this case, while he is someone who has been convicted of gun and drug offenses and has failed to comply with conditions of release in the past, he is not someone with a proven history of violent behavior.[2] Nor is the Court persuaded by the government's vague suggestions that Mr. Robertson might have tried to contact or intimidate witnesses in this case because it has provided no concrete or specific evidence to substantiate any such claims. For example, the government's cryptic report that witness N.F. was allegedly contacted by an unnamed individual about this case

[2] While Mr. Robertson does have prior arrests for violent offenses, these charges were all dismissed and are therefore unproven allegations. *See* Doc. 188 at 11–15.

is not a valid reason to deny Mr. Robertson release because the government has not come forward with any details to corroborate N.F.'s account or to link Mr. Robertson to the alleged contact.

More importantly, the Court has imposed a number of extremely strict and carefully tailored conditions of release that it believes will be more than sufficient to reasonably assure Mr. Robertson's appearance and the safety of the community. Mr. Robertson will be placed at La Pasada Halfway House, where he will be on home incarceration with active GPS tracking, the strictest form of location monitoring available to the Court. Doc. 301 at 2. He will not be allowed to leave La Pasada for any reason other than to meet with his attorneys, and he will not be allowed to transport himself to those meetings; his attorneys will have to transport him. *Id.* He will not be allowed any visitors at La Pasada except for his attorneys. *Id.* He will not be allowed to use or possess a cellphone, nor to borrow anyone else's cellphone. *Id.* He will not be allowed to use the landline at La Pasada, except to speak to his attorneys. *Id.* He will not be allowed to have contact with anyone other than his Pretrial Services officer and his attorneys. *Id.* That includes no contact with his family members until he shows the Court that he is fully compliant with all of his conditions of release. *Id.* He will not be allowed to use or possess drugs or alcohol. *Id.* He will be allowed to participate in counseling at La Pasada to help him cope with the stress of his looming trial. *Id.* He will be required to abide by all rules and regulations of the halfway house, however small. *Id.*

The Court believes that with all of these conditions, and under the close supervision of the staff at La Pasada and his Pretrial Services officer, Mr. Robertson will not pose a danger to the community or a risk of flight. The Court also cautioned Mr. Robertson at the February 4, 2021 pretrial conference that if he violates any of these conditions of release, the Court will not hesitate to reincarcerate him immediately. The Court accordingly finds that there are conditions, or a

combination of conditions, that will reasonably assure Mr. Robertson's appearance and the safety of any person and the community. His pretrial release is therefore required by 18 U.S.C. § 3142(e).

III. Mr. Robertson's Release is Necessary for the Preparation of His Trial Defense Under 18 U.S.C. § 3142(i).

The Court additionally finds that 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 officer who issued an order of detention to, by subsequent order, "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." § 3142(i).[3] The defendant bears the burden of establishing their entitlement to temporary release under § 3142(i). *United States v. Clark*, 448 F. Supp. 3d 1152, 1155 (D. Kan. 2020) (citation omitted). Courts considering whether pretrial release is necessary for the preparation of the person's defense 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." *United States v. Boatwright*, ---F. Supp. 3d---, No. 2:19-CR-00301-GMN-DJA, 2020 WL 1639855, at *4 (D. Nev. Apr. 2, 2020) (unreported) (citations omitted).

Here, all of those factors weigh in favor of release. Because Mr. Robertson's trial will be reset for April 5, 2021, he and his defense team have only two months left to prepare.

[3] While the Court recognizes that Magistrate Judge Briones is the judicial officer that issued Mr. Robertson's initial order of detention, this matter is before the Court on Mr. Robertson's request that the Court review that detention order under 18 U.S.C. § 3145(b). *See* Doc. 274 at 1. The Tenth Circuit has not yet ruled on whether a request for temporary release under 18 U.S.C. § 3142(i) can only be decided by the Magistrate Judge that issued the initial order of detention. *See United States v. Alderete*, 336 F.R.D. 240, 268 (D.N.M. 2020). But at least one other federal district court has recently considered and granted pretrial release under that section. *See United States v. Stephens*, 447 F. Supp. 3d 63, 66–68 (S.D.N.Y. 2020) (Nathan, J.); *but see Alderete*, 336 F.R.D. at 268.

Complicating matters further is the fact that both of Mr. Robertson's initial defense attorneys have recently withdrawn from the case, and both of his current attorneys have been appointed within the past six months (one in the last three weeks). The defense team therefore has a considerable amount of catching up to do in a very short amount of time, and defense counsel need to immediately begin meeting with Mr. Robertson on a regular basis. The case is also complex and exceedingly serious. The government has named 24 witnesses on its most recent witness list [Doc. 104] and the Court has issued upwards of 30 written orders over the past three years of contentious pretrial litigation in this case. And if Mr. Robertson is convicted on all charges, he will be facing decades in prison: according to his Form 13 PSR, Mr. Robertson's effective guidelines range would be a staggering 412 to 485 months of imprisonment, or approximately 34 to 40 years. *See* Doc. 188 at 15.

Finally, defense counsel explained at the recent pretrial conference that it will be impossible for them to effectively prepare the case for trial with Mr. Robertson in custody under the current lockdown conditions due to COVID-19. In normal times, defense counsel can meet with their clients face to face in meeting rooms at the jails, where they can review discovery and do other critical trial preparation. Now, however, if the jails are allowing in-person client meetings at all, it is with the defendants separated from their counsel by a screen, making it nearly impossible to effectively review documentary evidence. And while defense counsel represented that the Santa Fe County Detention Center is allowing video meetings by Zoom, it is hard to schedule Zoom time due to the limited number of computer facilities at the jail and the number of parties vying for them (including this Court). Defense counsel also represented that while the Zoom meetings have been helpful, the Detention Center has not allowed them to show Mr. Robertson documents by sharing their screen, requiring counsel to instead hold the documents up to their computer's camera in the

hopes that Mr. Robertson can see them that way.

This is no way to prepare for a trial. The defense team needs to be able to meet with Mr. Robertson in person, unobstructed by metal bars or a plexiglass barrier, to do the critical and time-consuming work of reviewing discovery, evidence, and exhibits; discussing trial strategy; and making the countless decisions which individually and collectively can make the difference between a verdict of guilty and not guilty. Mr. Robertson's attorneys also need unobstructed access to him to build the trust and confidence they need to effectively defend him at trial. They need to meet with him for as long as they need to, as frequently as they need to, every day if necessary. They cannot be at the mercy of the jail and its fluctuating visitation policies due to COVID-19. As the past twelve months have taught us, our prisons and jails are at constant risk of severe outbreaks, which at times have required multi-week lockdowns to ensure the safety of the staff and inmates. The defense also cannot be at the mercy of the Court or the United States Marshals Service because our policies have been in constant flux as well. None of this will provide Mr. Robertson the opportunity at a fair trial that he deserves and to which he is constitutionally entitled. Nor can he be made to sit in jail indefinitely, awaiting trial as a legally innocent man, until it is safe and practically possible for his attorneys to meet with him there. The status quo is no longer acceptable, and Mr. Robertson's release is necessary for the preparation of his defense. § 3142(i).

IV. The Government Has Not Demonstrated Its Entitlement to Reconsideration or a Stay.

Finally, the Court is not persuaded by the government's request for reconsideration or a stay pending appeal. *See* Doc. 298. In asking the Court to reconsider its order granting Mr. Robertson pretrial release, the government represents that it has obtained two new pieces of information following the pretrial conference at which the Court informed the parties of its release

decision. First, the government represents that, per the United States Marshal's Service, "the interview room at the courthouse can be made available for [Mr. Robertson] to meet with his attorneys to prepare for trial, for unlimited meetings and unlimited durations of meetings during business hours, excepting only times when the Aspen courtroom is in use." Doc. 298 at 2. There is a catch, however: "There is a screen in the interview room, which will allow for appropriate social distancing between [Mr. Robertson] and his lawyers." *Id.* Second, the government represents that "the Santa Fe jail is willing to provide an exception to the policy barring in-person attorney visits, and will work to accommodate in-person visits between Robertson and his attorneys." *Id.*

While the Court appreciates the government's effort in gathering information on these alternatives, they do not change its decision on release. First, the Court notes that the government could have, and should have, presented this information earlier if it wanted the Court to rely on these alternatives to deny release. Mr. Robertson filed his motion for reconsideration on December 21, 2020. Doc. 274. The government had a month and a half to investigate alternatives and make its argument against release. It cannot wait until an unfavorable ruling to present additional evidence that it was capable of presenting in the first instance. A motion for reconsideration is for presenting new evidence that was "previously unavailable." *Servants of Paraclete*, 204 F.3d at 1012.

Second, the proposed alternatives are inadequate to address the trial preparation concerns the Court has articulated. The proposal to use the interview room at the Santa Fe courthouse is inadequate because the room, by the government's own description, will still contain a "screen" between Mr. Robertson and his attorneys. For all of the reasons set forth above, the defense team cannot effectively prepare for trial if they cannot sit next to Mr. Robertson and go over documents

line by line in a way that is not possible through a screen. The fact that the interview room will be unavailable when the Aspen courtroom is in use is also unacceptable because the courtroom has been, and will be, in frequent use, just as it was when the parties in this case met all day for the *Daubert* hearing and pretrial conference on February 4. The Court's calendar is also constantly shifting, meaning that the defense team will have little to no ability to confidently predict when they will be able to meet with Mr. Robertson. The proposal involving the Santa Fe County Detention Center fares no better. The government's language is tellingly equivocal. First, it states that "the Santa Fe jail is *potentially willing* to amend their policy that currently bars in-person attorney visits in response to this Court's concerns." Doc. 298 at 1 (emphasis added). Later, the government writes that the jail *is* willing to allow in-person meetings, but that it will "*work to accommodate* in-person visits between Robertson and his attorneys." *Id.* at 2 (emphasis added). Rather than inspire confidence, the language of government's motion reflects the high level of uncertainty that our jails have operated with over the last year. The truth remains that the Santa Fe County Detention Center, like all jails, can still go into a full and indefinite lockdown at any time due to the continued spread of COVID-19 (and potentially the virus's recent and more infectious variants). The Court also does not want to put the jail or the defense team at risk of COVID-19 because the jail feels compelled to deviate from what it believes are its best safety practices. Neither of the government's proposals are adequate to provide Mr. Robertson the consistent and predictable in-person contact with his defense attorneys that he needs.

Finally, the Court will not grant the requested stay pending appeal, as it noted in its earlier release order. Doc. 300. First, the government has failed to cite or apply the legal standard for such a stay. *See* D.N.M. Local R. Crim. P. 47.7 ("A motion, response or reply must cite authority in support of legal positions advanced."). Second, the Court does not agree that the government

is likely to succeed on the merits of its appeal because it believes that Mr. Robertson's release is required by § 3142(e) and permitted by § 3142(i) for all of the reasons stated above. Nor does the Court agree that "[t]here is no immediate need to release [Mr. Robertson] today." Doc. 298 at 4. As the Court has explained, with Mr. Robertson heading to trial in two months, the defense team needs every day it can get to prepare with him, especially if he will be required to quarantine for two weeks upon arriving at La Pasada, as was suggested at the pretrial conference.

CONCLUSION

For the reasons set forth above, Mr. Robertson's Motion to Reconsider Motion for Review of Detention Order and Immediate Release [Doc. 274] is hereby **GRANTED**. *See also* Doc. 300. All of the conditions of Mr. Robertson's release can be found in the Order Setting Conditions of Release, filed on February 5, 2021. Doc. 301. The government's Amended Emergency Motion for Reconsideration of and Stay of Release Order [Doc. 298] is **DENIED**.

DATED this 6th day of February, 2021.

MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE