Exhibit F

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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

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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,

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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:

Annie Farmer 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.

13, place Vendôme - 75042 Paris Cedex 01
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www.justice.gouv.fr

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

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MINISTRY
OF JUSTICE
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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,

/s/ Mark S. Cohen

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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

WILLIAM JULIÉ
AVOCAT À LA COUR

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.

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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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Attorneys for Ghislaine Maxwell

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

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[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,

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[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

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[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,

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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

Philippe JAEGLÉ

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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

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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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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

LAW OFFICES OF BOBBI C. STERNHEIM

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New York, New York 10011
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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

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: April 01, 2021
Docket #: 21-58
Short Title: United States of America v. Maxwell

DC Docket #: 1:20-cr-330-1
DC Court: SDNY (NEW YORK CITY)DC Docket #: 1:20-cr-330-1
DC Court: SDNY (NEW YORK CITY)
DC Judge: Nathan

NOTICE OF DEFECTIVE FILING

On April 01, 2021 the Notice of Appearance as Additional Counsel, on behalf of the Appellee United States of America, was submitted in the above referenced case. The document does not comply with the FRAP or the Court's Local Rules for the following reason:

_____ Failure to submit acknowledgment and notice of appearance *(Local Rule 12.3)*
_____ Failure to file the Record on Appeal *(FRAP 10, FRAP 11)*
_____ Missing motion information statement *(T-1080 - Local Rule 27.1)*
_____ Missing supporting papers for motion (e.g, affidavit/affirmation/declaration) *(FRAP 27)*
_____ Insufficient number of copies *(Local Rules: 21.1, 27.1, 30.1, 31.1)*
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_____ Not Text-Searchable *(Local Rule 25.1, Local Rules 25.2),* click here for instructions on how to make PDFs text searchable
_____ Failure to file appendix on CD-ROM *(Local Rule 25.1, Local Rules 25.2)*
_____ Failure to file special appendix *(Local Rule 32.1)*
_____ Defective cover *(FRAP 32)*
    _____ Incorrect caption *(FRAP 32)*
    _____ Wrong color cover *(FRAP 32)*
    _____ Docket number font too small *(Local Rule 32.1)*
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_____ Oversized filing *(FRAP 27 (motion), FRAP 32 (brief))*
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___X___ **Other: MUST INCLUDE BOTH DOCKET NUMBERS 21-58 (L) and 21-770 (con).**

Please cure the defect and resubmit the document, with the required copies if necessary, no later than **April 05, 2021**. The resubmitted documents, if compliant with FRAP and the Local Rules, will be deemed timely filed.

Failure to cure the defect by the date set forth above will result in the document being stricken. An appellant's failure to cure a defective filing may result in the dismissal of the appeal.

Inquiries regarding this case may be directed to 212-857-8577.

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States v. Maxwell Docket No.: 21-58(L), 21-770(CON)

Substitute, Additional, or Amicus Counsel's Contact Information is as follows:

Name: Thomas McKay

Firm: United States Attorney's Office for the Southern District of New York

Address: One St. Andrew's Plaza

Telephone: (212) 637-2268 Fax: (212) 637-0128

E-mail: thomas.mckay@usdoj.gov

Appearance for: United States of America/Appellee
(party/designation)

Select One:

☐ Substitute counsel (replacing lead counsel: _____)
(name/firm)

☐ Substitute counsel (replacing other counsel: _____)
(name/firm)

☑ Additional counsel (co-counsel with: Won Shin/U.S. Attorney's Office for the Southern District of New York)
(name/firm)

☐ Amicus (in support of : _____)
(party/designation)

CERTIFICATION

I certify that:

☑ I am admitted to practice in this Court and, if required by Interim Local Rule 46.1(a)(2), have renewed my admission on _____ OR

☐ I applied for admission on _____.

Signature of Counsel: /s/

Type or Print Name: Thomas McKay

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: April 05, 2021
Docket #: 21-58
Short Title: United States of America v. Maxwell

DC Docket #: 1:20-cr-330-1
DC Court: SDNY (NEW YORK CITY)DC Docket #: 1:20-cr-330-1
DC Court: SDNY (NEW YORK CITY)
DC Judge: Nathan

NOTICE OF DEFECTIVE FILING

On April 05, 2021 the Notice of Appearance as Additional Counsel, on behalf of the Appellee United States of America, was submitted in the above referenced case. The document does not comply with the FRAP or the Court's Local Rules for the following reason(s):

_____ Failure to submit acknowledgment and notice of appearance *(Local Rule 12.3)*
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_____ Untimely filing
_____ Incorrect Filing Event
__X____ **Other: IF COUNSEL WISHES TO BE ADDED TO BOTH CASES, YOU MUST LIST BOTH DOCKET NUMBERS ON THE FORM 21-58 – L AND 21-770 CON**.

Please cure the defect and resubmit the document, with the required copies if necessary, no later than **April 07, 2021**. The resubmitted documents, if compliant with FRAP and the Local Rules, will be deemed timely filed.

Failure to cure the defect by the date set forth above will result in the document being stricken. An appellant's failure to cure a defective filing may result in the dismissal of the appeal.

Inquiries regarding this case may be directed to 212-857-8577.

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: April 05, 2021
Docket #: 21-770
Short Title: United States of America v. Maxwell

DC Docket #: 1:20-cr-330-1
DC Court: SDNY (NEW YORK CITY)
DC Judge: Nathan

NOTICE OF DEFECTIVE FILING

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_____ Untimely filing

_____ Incorrect Filing Event
___X___ **Other: PLEASE RE-FILE UNDER BOTH DOCKET NUMBERS 21-58 – L AND 21-770 (con). THE ACKNOWLEDGMENT FOR MUST ALSO LIST THE LEAD DOCKET NUMBER.**

Please cure the defect and resubmit the document, with the required copies if necessary, no later than **April 07, 2021** resubmitted documents, if compliant with FRAP and the Local Rules, will be deemed timely filed.

Failure to cure the defect by the date set forth above will result in the document being stricken. An appellant's failure to cure a defective filing may result in the dismissal of the appeal.

Inquiries regarding this case may be directed to 212-857-8577.

ACKNOWLEDGMENT AND NOTICE OF APPEARANCE

Short Title: United States of America v. Maxwell Docket No.: 21-770/21-58

Lead Counsel of Record (name/firm) or Pro se Party (name): David Oscar Markus, Markus/Moss PLLC

Appearance for (party/designation): Ghislaine Maxwell

DOCKET SHEET ACKNOWLEDGMENT/AMENDMENTS

Caption as indicated is:
(☑) Correct
(☐) Incorrect. See attached caption page with corrections.

Appellate Designation is:
(☑) Correct
(☐) Incorrect. The following parties do not wish to participate in this appeal:
Parties: _____
(☐) Incorrect. Please change the following parties' designations:
Party Correct Designation

Contact Information for Lead Counsel/Pro Se Party is:
(☑) Correct
(☐) Incorrect or Incomplete. As an e-filer, I have updated my contact information in the PACER "Manage My Account" screen.

Name: David Oscar Markus
Firm: Markus/Moss PLLC
Address: 40 NW Third Street, PH 1, Miami, Florida 33128
Telephone: (305)379-6667 Fax: (305)379-6668
Email: dmarkus@markuslaw.com

RELATED CASES

(☐) This case has not been before this Court previously.
(☐) This case has been before this Court previously. The short title, docket number, and citation are: _____

(☑) Matters related to this appeal or involving the same issue have been or presently are before this Court. The short titles, docket numbers, and citations are: United States of America v. Maxwell, Case Number 21-58.

CERTIFICATION

I certify that (☑) I am admitted to practice in this Court and, if required by LR 46.1(a)(2), have renewed my admission on _____ OR that (☐) I applied for admission on _____ or renewal on _____. If the Court has not yet admitted me or approved my renewal, I have completed Addendum A.
Signature of Lead Counsel of Record: /s/ David Oscar Markus
Type or Print Name: David Oscar Markus
OR
Signature of pro se litigant: _____
Type or Print Name: _____
(☐) I am a pro se litigant who is not an attorney.
(☐) I am an incarcerated pro se litigant.

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): 21-58, 21-770 Caption [use short title] United States v. Maxwell

Motion for: Leave to file exhibit under seal

Set forth below precise, complete statement of relief sought:

The Government seeks leave to file exhibit under seal

MOVING PARTY: United States of America **OPPOSING PARTY:** Ghislaine Maxwell

☐ Plaintiff ☐ Defendant

☐ Appellant/Petitioner ☑ Appellee/Respondent

MOVING ATTORNEY: Audrey Strauss, U.S. Attorney, Southern District of New York **OPPOSING ATTORNEY:** David Markus

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

By: Lara Pomerantz, Assistant U.S. Attorney
One Saint Andrew's Plaza, New York, NY 10007
(212) 637-2343; Email: lara.pomerantz@usdoj.gov

Markus/Moss PLLC
40 NW Third Street, PH 1, Miami, FL 33128
(305) 379-6667; Email: dmarkus@markuslaw.com

Court- Judge/ Agency appealed from: The Honorable Alison J. Nathan, United States District Judge, 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: April 26, 2021

Signature of Moving Attorney:

s/ Lara Pomerantz **Date:** 04/12/21 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, *Appellee,* - v. - GHISLAINE MAXWELL, *Defendant-Appellant,*	:	**AFFIRMATION** Docket Nos. 21-58, 21-770

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

LARA POMERANTZ, pursuant to 28 U.S.C. § 1746, hereby affirms under penalty of perjury:

1. I am an Assistant United States Attorney in the Office of Audrey Strauss, United States Attorney for the Southern District of New York, and I represent the Government in this appeal. I submit this affirmation in support of the Government's motion to file an unredacted copy of Exhibit F, the Government's Memorandum in Opposition to the Defendant's Renewed Motion for Release, under seal.

2. Counsel for the Defendant-Appellant filed publicly a redacted version of Exhibit F, which was the version publicly filed on the docket in this case. (Dkt. No. 100). The redactions to that document are narrowly tailored to cover (1) information implicating the privacy interests of third parties previously articulated by the defense (Dkt. No. 86), and (2) Confidential Material produced by the Government in discovery and governed by the protective order in this case (Dkt. No. 36). The Government believes that some of the redacted information is pertinent to this appeal and therefore seeks leave to file an unredacted copy of Exhibit F under seal.

3. The Government has communicated with counsel for the Defendant-Appellant, who does not object to this request.

4. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
April 12, 2021

/s/ Lara Pomerantz
Lara Pomerantz
Assistant United States Attorney
Telephone: (212) 637-2343