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: September 10, 2020
Docket #: 20-3061
Short Title: United States of America v. Maxwell

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

DOCKETING NOTICE

An appeal in the above-referenced case has been docketed under number: 20-3061. This number must appear on all documents related to this case that are filed in this Court. Appellate counsel of record either represented the appellant before the district court, filed the notice of appeal, or acted as counsel for appellee in the district court. For pro se parties the docket sheet with the caption page, and an Acknowledgment and Notice of Appearance Form are enclosed. In counseled cases the docket sheet is available on PACER. Counsel must access the Acknowledgment and Notice of Appearance Form from this Court's website http://www.ca2.uscourts.gov.

The form must be completed and returned within 14 days of the date of this notice. The form requires the following information:

YOUR CORRECT CONTACT INFORMATION: Review the party information on the docket sheet and note any incorrect information in writing on the Acknowledgment and Notice of Appearance Form.

The Court will contact one counsel per party or group of collectively represented parties when serving notice or issuing our order. Counsel must designate on the Acknowledgment and Notice of Appearance a lead attorney to accept all notices from this Court who, in turn will, be responsible for notifying any associated counsel.

CHANGE IN CONTACT INFORMATION: An attorney or pro se party who does not immediately notify the Court when contact information changes will not receive notices, documents and orders filed in the case.

An attorney and any pro se party who is permitted to file documents electronically in CM/ECF must notify the Court of a change to the user's mailing address, business address, telephone number, or e-mail. To update contact information, a Filing User must access PACER's Manage My Appellate Filer Account, https://www.pacer.gov/psco/cgi-bin/cmecf/ea-login.pl. The Court's records will be updated within 1 business day of a user entering the change in PACER.

A pro se party who is not permitted to file documents electronically must notify the Court of a change in mailing address or telephone number by filing a letter with the Clerk of Court.

CAPTION: In an appeal, the Court uses the district court caption pursuant to FRAP 12(a), 32(a). For a petition for review or original proceeding the Court uses a caption pursuant to FRAP 15(a) or 21(a), respectively. Please review the caption carefully and promptly advise this Court of any improper or inaccurate designations in writing on the Acknowledgment and Notice of Appearance form. If a party has been terminated from the case the caption may reflect that change only if the district court judge ordered that the caption be amended.

APPELLATE DESIGNATIONS: Please review whether petitioner is listed correctly on the party listing page of the docket sheet and in the caption. If there is an error, please note on the Acknowledgment and Notice of Appearance Form. Timely submission of the Acknowledgment and Notice of Appearance Form will constitute compliance with the requirement to file a Representation Statement required by FRAP 12(b).

For additional information consult the Court's instructions posted on the website.

Inquiries regarding this case may be directed to 212-857-8503.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

----------X

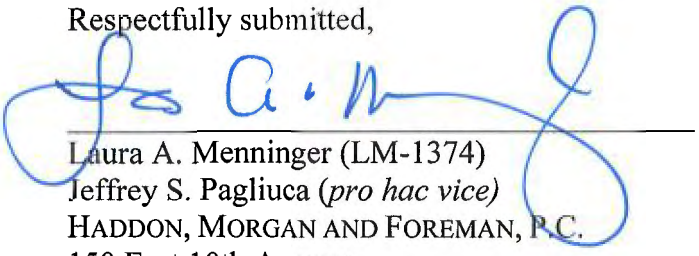
20-CR-330 (AJN)

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Ghislaine Maxwell, Defendant in the above-captioned case, hereby appeals to the United States Court of Appeals for the Second Circuit from the district court's September 2, 2020, Memorandum Opinion and Order denying her motion to modify the protective order. *Pichler v. UNITE*, 585 F.3d 741, 746 n.6 (3d Cir. 2009) ("We have jurisdiction under the collateral order doctrine to review the denial of the motion to modify the Protective Order and the denial of the motion to reconsider."); *Minpeco S.A. v. Conticommodity Servs., Inc.*, 832 F.2d 739, 742 (2d Cir. 1987) (denial of motion to modify protective order is immediately appealable under the collateral order doctrine) (citing *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 545–47 (1949)); *see also Brown v. Maxwell*, 929 F.3d 41, 44 (2d Cir. 2019) (appeal by intervenors challenging denial of motions to modify protective order and unseal).

Dated: September 3, 2020.

Respectfully submitted,



Laura A. Menninger (LM-1374)
Jeffrey S. Pagliuca (*pro hac vice)*
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Attorneys for Ghislaine Maxwell

CERTIFICATE OF SERVICE

I certify that on September 3, 2020, I filed this *Notice of Appeal* with the Clerk of Court by mail pursuant to Section 17 of the CM/ ECF Rules and served all parties of record by email.

/s/ Nicole Simmons

Court Name: District Court
Division: 1
Receipt Number: 465466266836
Cashier ID: bwooten
Transaction Date: 09/03/2020
Payer Name: GHISLANE MAXWELL

NOTICE OF APPEAL/DOCKETING FEE
For: GHISLANE MAXWELL
Amount: $505.00

CHECK
Check/Money Order Num: 329
Amt Tendered: $505.00

Total Due: $505.00
Total Tendered: $505.00
Change Amt: $0.00

20CR00836

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HADDON
MORGAN
FOREMAN

September 3, 2020

VIA OVERNIGHT DELIVERY

Southern District of New York
Court Clerk's Office
500 Pearl Street
New York, NY 10007-13122

Re: *US v. Maxwell,* Case No. 20 cr. 330 (AJN) Notice of Appeal

Dear Clerk of Court:

Attached hereto is the Notice of Appeal for filing and a check in the amount of $505.00 for the docketing and processing fees.

If you have any questions, please feel free to call me at the phone number referenced above.

Very truly yours,

Nicole Simmons

Nicole Simmons

Enclosures


RENEE MCREYNOLDS
3038317364
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150 EAST 10TH AVENUE
DENVER CO 80203

LTR 1 OF 1

SHIP TO:
CLERK OF COURT
US DISTRICT COURT - SDNY
500 PEARL STREET
DANIEL P. MOYNIHAN US COURTHOUSE
NEW YORK NY 10007

NY 102 9-10

UPS NEXT DAY AIR 1
TRACKING #: 1Z F46 61F 01 9417 6904

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UPS CARBON NEUTRAL SHIPMENT

Reference #1: Maxwell 20 cr. 330 (AJN)

XOL 20.08.05 NV45 31.0A 07/2020*

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US DISTRICT COURT - SDNY
500 PEARL ST

NEW YORK NY 10007

P: PURPLE S: FRNT 1: 028

A18-1416

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Delivered On

Friday
09/04/2020

Delivery Time

at 10:11 A.M.

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APPEAL,ECF

U.S. District Court
Southern District of New York (Foley Square)
CRIMINAL DOCKET FOR CASE #: 1:20−cr−00330−AJN All Defendants

Case title: USA v. Maxwell Date Filed: 06/29/2020

Assigned to: Judge Alison J. Nathan

Defendant (1)

Ghislaine Maxwell
also known as
Sealed Defendant 1

represented by **Christian R. Everdell**
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Pending Counts

18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS
(1)

18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX

Disposition

ACTS
(1s)

18:2422.F COERCION OR ENTICEMENT OFA MINOT TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS
(2)

18:2422.F COERCION OR ENTICEMENT OF MINOR TO ENGAGE IN ILLEGAL SEX ACTS
(2s)

18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY
(3)

18:371.F 18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY
(3s)

18:2423.F COERCION OR ENTICEMENT OF MINOR FEMALE (TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY)
(4)

18:2423.F TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY
(4s)

18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (PERJURY)
(5−6)

18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT
(5s−6s)

Highest Offense Level (Opening)

Felony

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

None

Plaintiff

USA

represented by

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/29/2020	1	SEALED INDICTMENT as to Sealed Defendant 1 (1) count(s) 1, 2, 3, 4, 5−6. (jm) (Main Document 1 replaced on 7/2/2020) (jm). (Entered: 07/02/2020)
07/02/2020	2	Order to Unseal Indictment as to Sealed Defendant 1. (Signed by Magistrate Judge Katharine H. Parker on 7/2/20)(jm) (Entered: 07/02/2020)
07/02/2020		INDICTMENT UNSEALED as to Ghislaine Maxwell. (jm) (Entered: 07/02/2020)
07/02/2020		Case Designated ECF as to Ghislaine Maxwell. (jm) (Entered: 07/02/2020)
07/02/2020		Case as to Ghislaine Maxwell ASSIGNED to Judge Alison J. Nathan. (jm) (Entered: 07/02/2020)
07/02/2020		Attorney update in case as to Ghislaine Maxwell. Attorney Alex Rossmiller,Maurene Ryan Comey,Alison Gainfort Moe for USA added. (jm) (Entered: 07/02/2020)
07/02/2020	4	MOTION to detain defendant . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 07/02/2020)

07/02/2020		Arrest of Ghislaine Maxwell in the United States District Court − District of New Hampshire. (jm) (Entered: 07/06/2020)
07/05/2020	5	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Alex Rossmiller dated July 5, 2020 re: Request to Schedule Initial Appearance Document filed by USA. (Comey, Maurene) (Entered: 07/05/2020)
07/06/2020	6	Rule 5(c)(3) Documents Received as to Ghislaine Maxwell from the United States District Court − District of New Hampshire. (jm) (Entered: 07/06/2020)
07/06/2020	7	ORDER as to Ghislaine Maxwell. This matter has been assigned to me for all purposes. In its July 5, 2020 letter, the Government on behalf of the parties requested that the Court schedule an arraignment, initial appearance, and bail hearing in this matter in the afternoon of Friday, July 10. See Dkt. No. 5. In light of the COVID public health crisis, there are significant safety issues related to in−court proceedings. If the Defendant is willing to waive her physical presence, this proceeding will be conducted remotely. To that end, defense counsel should confer with the Defendant regarding waiving her physical presence. If the Defendant wishes to waive her physical presence for this proceeding, she and her counsel should sign the attached form in advance of the proceeding if feasible.If this proceeding is to be conducted remotely, there are protocols at the Metropolitan Detention Center that limit the times at which the Defendant could be produced so that she could appear by video. In the next week, the Defendant could be produced by video at either 9:00 a.m. on July 9, 2020 or sometime during the morning of July 14, 2020. Counsel are hereby ordered to meet and confer regarding scheduling for this initial proceeding in light of these constraints. If counsel does anticipate proceeding remotely, by 9:00 p.m. tonight, counsel should file a joint letter proposing a date and time for the proceeding consistent with this scheduling information, as well as a revised briefing schedule for the Defendant's bail application.SO ORDERED. (Signed by Judge Alison J. Nathan on 7/6/2020)(jbo) (Entered: 07/06/2020)
07/06/2020	8	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Mark S. Cohen dated July 6, 2020 re: Scheduling (Cohen, Mark) (Entered: 07/06/2020)
07/07/2020	9	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated July 7, 2020 re: scheduling Document filed by USA. (Rossmiller, Alex) (Entered: 07/07/2020)
07/07/2020	10	ORDER as to Ghislaine Maxwell. An arraignment, initial conference, and bail hearing in this matter is hereby scheduled to occur as a remote video/teleconference using an internet platform on July 14, 2020 at 1 p.m. In advance of the conference, Chambers will email counsel with further information on how to access the video conference. To optimize the quality of the video feed, only the Court, the Defendant, defense counsel, and counsel for the Government will appear by video for the proceeding; all others may access the audio of the public proceeding by telephone. Due to the limited capacity of the internet platform system, only one attorney per party may participate by video. Co−counsel, members of the press, and the public may access the audio feed of the proceeding by calling a dial−in number, which the Court will provide in advance of the proceeding by subsequent order. Given the high degree of public interest in this case, a video feed of the remote proceeding will be available for viewing in the Jury Assembly Room located at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY. Due to social distancing requirements, seating will be extremely limited; when capacity is reached no additional persons will be admitted. Per the S.D.N.Y. COVID−19 Courthouse Entry Program, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to arriving at the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. Please see the instructions, attached. Completing the questionnaire ahead of time will save time and effort upon entry. Only persons who meet the entry requirements established by the questionnaire and whose temperatures are below 100.4 degrees will be allowed to enter the courthouse. Face coverings that cover the nose and mouth must be worn at all times. Anyone who fails to comply with the COVID−19 protocols that have been adopted by the Court will be required to leave the courthouse. There are no exceptions. As discussed in the Court's previous order, defense counsel shall, if possible, discuss the Waiver of Right to be Present at Criminal Proceeding with the Defendant prior to the

		proceeding. See Dkt. No. 7. If the Defendant consents, and is able to sign the form (either personally or, in accordance with Standing Order 20−MC−174 of March 27, 2020, by defense counsel), defense counsel shall file the executed form at least 24 hours prior to the proceeding. In the event the Defendant consents, but counsel is unable to obtain or affix the Defendant's signature on the form, the Court will conduct an inquiry at the outset of the proceeding to determine whether it is appropriate for the Court to add the Defendant's signature to the form. Pursuant to 18 U.S.C. § 3771(c)(1), the Government must make their best efforts to see that crime victims are notified of, and accorded, the rights provided to them in that section. This includes [t]he right to reasonable, accurate, and timely notice of any public court proceeding... involving the crime or of any release... of the accused and "[t]he right to be reasonably heard at any public proceeding in the district court involving release." Id. § 3771(a)(2), (4). The Court will inquire with the Government as to the extent of those efforts. So that appropriate logistical arrangements can be made, the Government shall inform the Court by email within 24 hours in advance of the proceeding if any alleged victim wishes to be heard on the question of detention pending trial. Finally, the time between the Defendant's arrest and July 6, 2020 is excluded under the Speedy Trial Act due to the delay involved in transferring the Defendant from another district. See 18 U.S.C. § 3161(h)(1)(F). And the Court further excludes time under the Speedy Trial Act from today through July 14, 2020. Due to the logistical issues involved in conducting a remote proceeding, the Court finds "that the ends of justice served by [this exclusion] outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). The exclusion is also supported by the need for the parties to discuss a potential protective order, which will facilitate the timely production of discovery in a manner protective of the rights of third parties. See Dkt. No. 5. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/7/2020)(jbo) (Entered: 07/07/2020)
07/08/2020	11	MEMO ENDORSEMENT as to Ghislaine Maxwell on 9 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated July 7, 2020 re: scheduling. ENDORSEMENT: The Court hereby sets the following briefing schedule. The Defense response is due by 1:00 p.m. on July 10, 2020. The Government reply is due by 1:00 p.m. on July 13, 2020. Additionally, defense counsel is ordered to file notices of appearance on the docket by the end of the day today. SO ORDERED. (Responses due by 7/10/2020. Replies due by 7/13/2020.) (Signed by Judge Alison J. Nathan on 7/8/2020) (lnl) (Entered: 07/08/2020)
07/08/2020	12	NOTICE OF ATTORNEY APPEARANCE: Mark Stewart Cohen appearing for Ghislaine Maxwell. Appearance Type: Retained. (Cohen, Mark) (Entered: 07/08/2020)
07/08/2020	13	NOTICE OF ATTORNEY APPEARANCE: Christian R. Everdell appearing for Ghislaine Maxwell. Appearance Type: Retained. (Everdell, Christian) (Entered: 07/08/2020)
07/08/2020	14	NOTICE OF ATTORNEY APPEARANCE: Laura A. Menninger appearing for Ghislaine Maxwell. Appearance Type: Retained. (Menninger, Laura) (Entered: 07/08/2020)
07/08/2020	15	MOTION for Jeffrey S. Pagliuca to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC−20605229. **Motion and supporting papers to be reviewed by Clerk's Office staff.** Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit Declaration of Jeffrey S. Pagliuca, # 2 Exhibit Certificate of Good Standing, # 3 Text of Proposed Order Proposed Order)(Pagliuca, Jeffrey) (Entered: 07/08/2020)
07/08/2020	17	(S1) SUPERSEDING INDICTMENT FILED as to Ghislaine Maxwell (1) count(s) 1s, 2s, 3s, 4s, 5s−6s. (jm) (Entered: 07/10/2020)
07/09/2020		**>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 15 MOTION for Jeffrey S. Pagliuca to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC−20605229. Motion and supporting papers to be reviewed by Clerk's Office staff. The document has been reviewed and there are no deficiencies. (aea)** (Entered: 07/09/2020)
07/09/2020	16	ORDER as to Ghislaine Maxwell. As discussed in its previous order, the Court will hold an arraignment, initial conference, and bail hearing in this matter remotely as a video/teleconference on July 14, 2020 at 1 pm. Members of the press and the public in the United States may access the live audio feed of the proceeding by calling 855−268−7844 and using access code 32091812# and PIN 9921299#. Those outside of

		the United States may access the live audio feed by calling 214−416−0400 and using the same access code and PIN. These phone lines can accommodate approximately 500 callers on a first come, first serve basis. The Court will provide counsel for both sides an additional dial−in number to be used to ensure audio access to the proceeding for non−speaking co−counsel, alleged victims, and any family members of the Defendant. The United States Attorney's Office should email Chambers with information regarding any alleged victims who are entitled, pursuant to 18 U.S.C. §3771(a)(4), to be heard at the bail hearing and who wish to be heard. The Court will then provide information as to the logistics for their dial−in access. As the Court described in a previous order, members of the press and public may watch and listen to the live video feed in the Jury Assembly Room, at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street. See Dkt. No. 10. However, in light of COVID−19, seating will be limited to approximately 60 seats in order to enable appropriate social distancing and ensure public safety. Counsel for the Defendant and the Government may contact Chambers by email if there is a request to accommodate alleged victims or family members of the Defendant. Members of the credentialed in−house press corps may contact the District Executive's Office about seating. Otherwise, all seating will be allocated on a first come, first serve basis and in accordance with the S.D.N.Y. COVID−19 Courthouse Entry Program and this Court's previous order of July 7, 2020. See Dkt. No. 10. If conditions change or the Court otherwise concludes that allowing for in−person viewing of the video feed at the courthouse is not consistent with public health, the Court may provide audio access by telephone only. Any photographing, recording, or rebroadcasting of federal court proceedings is prohibited by law. Violation of these prohibitions may result in fines or sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/9/2020)(jbo) (Entered: 07/09/2020)
07/10/2020	18	MEMORANDUM in Opposition by Ghislaine Maxwell re 4 MOTION to detain defendant .. (Cohen, Mark) (Entered: 07/10/2020)
07/10/2020	19	NOTICE OF ATTORNEY APPEARANCE: Mark Stewart Cohen appearing for Ghislaine Maxwell. Appearance Type: Retained. (Cohen, Mark) (Entered: 07/10/2020)
07/10/2020	20	NOTICE OF ATTORNEY APPEARANCE: Christian R. Everdell appearing for Ghislaine Maxwell. Appearance Type: Retained. (Everdell, Christian) (Entered: 07/10/2020)
07/10/2020	21	WAIVER of Personal Appearance at Arraignment and Entry of Plea of Not Guilty by Ghislaine Maxwell. (Everdell, Christian) (Entered: 07/10/2020)
07/13/2020	22	REPLY MEMORANDUM OF LAW in Support by USA as to Ghislaine Maxwell re: 4 MOTION to detain defendant . . (Moe, Alison) (Entered: 07/13/2020)
07/13/2020		ORDER granting 15 Motion for Jeffrey Pagliuca to Appear Pro Hac Vice as to Ghislaine Maxwell (1). (Signed by Judge Alison J. Nathan on 7/13/2020) (kwi) (Entered: 07/13/2020)
07/14/2020	23	ORDER as to Ghislaine Maxwell. For the reasons stated on the record at today's proceeding, the Governments motion to detain the Defendant pending trial is hereby GRANTED (Signed by Judge Alison J. Nathan on 7/14/20)(jw) (Entered: 07/14/2020)
07/14/2020		Minute Entry for proceedings held before Judge Alison J. Nathan:Arraignment as to Ghislaine Maxwell (1) Count 1s,2s,3s,4s,5s−6s held on 7/14/2020. Defendant Ghislaine Maxwell present by video conference with attorney Mark Cohen present by video conference, AUSA Alison Moe, Alex Rossmiller and Maurene Comey for the government present by video conference, Pretrial Service Officer Lea Harmon present by telephone and Court Reporter Kristine Caraannante. Defendant enters a plea of Not Guilty to the S1 indictment. Trial set for July 12, 2021. See Order. Time is excluded under the Speedy Trial Act from today until July 12, 2021. Bail is denied. Defendant is remanded. See Transcript. (jw) (Entered: 07/14/2020)
07/14/2020		Minute Entry for proceedings held before Judge Alison J. Nathan: Plea entered by Ghislaine Maxwell (1) Count 1s,2s,3s,4s,5s−6s Not Guilty. (jw) (Entered: 07/14/2020)

07/14/2020	24	Waiver of Right to be Present at Criminal Proceeding as to Ghislaine Maxwell re: Arraignment, Bail Hearing, Conference. (jw) (Entered: 07/14/2020)
07/15/2020	25	ORDER as to Ghislaine Maxwell. Initial non−electronic discovery, generally to include search warrant applications and subpoena returns, is due by Friday, August 21, 2020. Completion of discovery, to include electronic materials, is due by Monday, November 9, 2020. Motions are due by Monday, December 21, 2020. Motion responses are due by Friday, January 22, 2021. Motion replies are due by Friday, February 5, 2021. Trial is set for Monday, July 12, 2021 (Discovery due by 8/21/2020., Motions due by 12/21/2020) (Signed by Judge Alison J. Nathan on 7/15/20)(jw) (Entered: 07/15/2020)
07/21/2020	26	ORDER as to Ghislaine Maxwell: The Court has received a significant number of letters and messages from non−parties that purport to be related to this case. These submissions are either procedurally improper or irrelevant to the judicial function. Therefore, they will not be considered or docketed. The Court will accord the same treatment to any similar correspondence it receives in the future. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/21/2020) (lnl) (Entered: 07/21/2020)
07/21/2020	27	LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated July 21, 2020 re: Local Criminal Rule 23.1 . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 07/21/2020)
07/23/2020	28	ORDER as to Ghislaine Maxwell: The Defense has moved for an order "prohibiting the Government, its agents and counsel for witnesses from making extrajudicial statements concerning this case." Dkt. No. 27 at 1. The Court firmly expects that counsel for all involved parties will exercise great care to ensure compliance with this Court's local rules, including Local Criminal Rule 23.1, and the rules of professional responsibility. In light of this clear expectation, the Court does not believe that further action is needed at this time to protect the Defendant's right to a fair trial by an impartial jury. Accordingly, it denies the Defendant's motion without prejudice. But the Court warns counsel and agents for the parties and counsel for potential witnesses that going forward it will not hesitate to take appropriate action in the face of violations of any relevant rules. The Court will ensure strict compliance with those rules and will ensure that the Defendant's right to a fair trial will be safeguarded. (Signed by Judge Alison J. Nathan on 7/23/2020) (ap) (Entered: 07/23/2020)
07/27/2020	29	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 27, 2020 re: Proposed Protective Order . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A (Proposed Protective Order))(Everdell, Christian) (Entered: 07/27/2020)
07/27/2020	30	AFFIDAVIT of Christian R. Everdell by Ghislaine Maxwell. (Everdell, Christian) (Entered: 07/27/2020)
07/27/2020	31	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe dated July 27, 2020 re: requesting until 5 p.m. tomorrow to respond to defense counsel's letter, filed July 27, 2020 Document filed by USA. (Moe, Alison) (Entered: 07/27/2020)
07/27/2020	32	MEMO ENDORSEMENT as to Ghislaine Maxwell on 31 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe dated July 27, 2020 re: requesting until 5 p.m. tomorrow to respond to defense counsel's letter, filed July 27, 2020. ENDORSEMENT: The Government's response to the Defense's letter is due by 5 p.m. on July 28, 2020. The Defense may file a reply by 5 p.m. on July 29, 2020. Before the Government's response is filed, the parties must meet and confer by phone regarding this issue, and any response from the Government must contain an affirmation that the parties have done so. SO ORDERED. (Responses due by 7/28/2020. Replies due by 7/29/2020.) (Signed by Judge Alison J. Nathan on 7/27/2020) (lnl) (Entered: 07/27/2020)
07/28/2020	33	LETTER RESPONSE to Motion by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated July 28, 2020 re: 29 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 27, 2020 re: Proposed Protective Order .. (Attachments: # 1 Exhibit A (proposed protective order))(Rossmiller, Alex) (Entered: 07/28/2020)

07/28/2020	34	AFFIDAVIT of Alex Rossmiller by USA as to Ghislaine Maxwell. (Rossmiller, Alex) (Entered: 07/28/2020)
07/29/2020	35	LETTER REPLY TO RESPONSE to Motion by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 29, 2020 re 29 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 27, 2020 re: Proposed Protective Order .. (Everdell, Christian) (Entered: 07/29/2020)
07/30/2020	36	PROTECTIVE ORDER as to Ghislaine Maxwell...regarding procedures to be followed that shall govern the handling of confidential material. SO ORDERED: (Signed by Judge Alison J. Nathan on 7/30/2020)(bw) (Entered: 07/31/2020)
07/30/2020	37	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. Both parties have asked for the Court to enter a protective order. While they agree on most of the language, two areas of dispute have emerged. First, Ms. Maxwell seeks language allowing her to publicly reference alleged victims or witnesses who have spoken on the public record to the media or in public fora, or in litigation relating to Ms. Maxwell or Jeffrey Epstein. Second, Ms. Maxwell seeks language restricting potential Government witnesses and their counsel from using discovery materials for any purpose other than preparing for the criminal trial in this action. The Government has proposed contrary language on both of these issues. For the following reasons, the Court adopts the Government's proposed protective order Under Federal Rule of Criminal Procedure 16(d)(1), "[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief." The good cause standard "requires courts to balance several interests, including whether dissemination of the discovery materials inflicts hazard to others... whether the imposition of the protective order would prejudice the defendant," and "the public's interest in the information." United States v. Smith, 985 F. Supp. 2d 506, 522 (S.D.N.Y. 2013). The party seeking to restrict disclosure bears the burden of showing good cause. Cf. Gambale v. Deutsche Bank AG, 377 F.3d 133, 142 (2d Cir. 2004). First, the Court finds that the Government has met its burden of showing good cause with regard to restricting the ability of Ms. Maxwell to publicly reference alleged victims and witnesses other than those who have publicly identified themselves in this litigation. As a general matter, it is undisputed that there is a strong and specific interest in protecting the privacy of alleged victims and witnesses in this case that supports restricting the disclosure of their identities. Dkt. No. 29 at 3 (acknowledging that as a baseline the protective order should "prohibit[] Ms. Maxwell, defense counsel, and others on the defense team from disclosing or disseminating the identity of any alleged victim or potential witness referenced in the discovery materials"); see also United States v. Corley, No. 13−cr−48, 2016 U.S. Dist. LEXIS 194426, at *11 (S.D.N.Y. Jan. 15, 2016). The Defense argues this interest is significantly diminished for individuals who have spoken on the public record about Ms. Maxwell or Jeffrey Epstein, because they have voluntarily chosen to identify themselves. But not all accusations or public statements are equal. Deciding to participate in or contribute to a criminal investigation or prosecution is a far different matter than simply making a public statement "relating to" Ms. Maxwell or Jeffrey Epstein, particularly since such a statement might have occurred decades ago and have no relevance to the charges in this case. These individuals still maintain a significant privacy interest that must be safeguarded. The exception the Defense seeks is too broad and risks undermining the protections of the privacy of witnesses and alleged victims that is required by law. In contrast, the Government's proffered language would allow Ms. Maxwell to publicly reference individuals who have spoken by name on the record in this case. It also allows the Defense to "referenc[e] the identities of individuals they believe may be relevant... to Potential Defense Witnesses and their counsel during the course of the investigation and preparation of the defense case at trial." Dkt. No. 33−1, 5. This proposal adequately balances the interests at stake. And as the Government's letter notes, see Dkt. No. 33 at 4, to the extent that the Defense needs an exception to the protective order for a specific investigative purpose, they can make applications to the Court on a case−by−case basis. Second, restrictions on the ability of potential witnesses and their counsel to use discovery materials for purposes other than preparing for trial in this case are unwarranted. The request appears unprecedented despite the fact that there have been many high−profile criminal matters that had related civil litigation. The Government labors under many restrictions including Rule 6(e) of the Federal Rules of Criminal Procedure, the Privacy Act of 1974, and other policies of the Department of Justice and the U.S. Attorney's Office for the Southern

		District of New York, all of which the Court expects the Government to scrupulously follow. Furthermore, the Government indicates that it will likely only provide potential witnesses with materials that those witnesses already have in their possession. See Dkt. No. 33 at 6. And of course, those witnesses who do testify at trial would be subject to examination on the record as to what materials were provided or shown to them by the Government. Nothing in the Defense's papers explains how its unprecedented proposed restriction is somehow necessary to ensure a fair trial. For the foregoing reasons, the Court adopts the Government's proposed protective order, which will be entered on the docket. This resolves Dkt. No. 29. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/30/2020)(bw) (Entered: 07/31/2020)
08/10/2020	38	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 08/10/2020)
08/10/2020	39	AFFIDAVIT of Christian R. Everdell by Ghislaine Maxwell. (Everdell, Christian) (Entered: 08/10/2020)
08/11/2020	40	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 38 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access. ENDORSEMENT: The Government is hereby ORDERED to respond to the Defendant's letter motion by Thursday, August 13, 2020. The Defendant's reply, if any, is due on or before Monday, August 17, 2020. (Responses due by 8/13/2020. Replies due by 8/17/2020) (Signed by Judge Alison J. Nathan on 8/11/2020) (ap) (Entered: 08/11/2020)
08/13/2020	41	LETTER RESPONSE in Opposition by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated August 13, 2020 re: 38 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access .. (Rossmiller, Alex) (Entered: 08/13/2020)
08/17/2020	42	LETTER REPLY TO RESPONSE to Motion by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 17, 2020 re 38 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access .. (Everdell, Christian) (Entered: 08/17/2020)
08/17/2020	43	LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated August 17, 2020 re: Request for Permission to Submit Letter Motion in Excess of Three Pages . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 08/17/2020)
08/18/2020	44	ORDER as to Ghislaine Maxwell: On August 17, 2020, the Defendant filed a letter motion seeking a modification of this Court's Protective Order, which the Court entered on July 30, 2020. Defendant also moves to file that letter motion under seal. The Governments opposition to Defendant's letter motion is hereby due Friday, August 21 at 12 p.m. The Defendant's reply is due on Monday, August 24 at 12 p.m. The parties shall propose redactions to the letter briefing on this issue. Alternatively, the parties shall provide support and argument for why the letter motions should be sealed in their entirety. SO ORDERED. (Responses due by 8/21/2020. Replies due by 8/24/2020.) (Signed by Judge Alison J. Nathan on 8/18/2020) (lnl) (Entered: 08/18/2020)
08/20/2020	45	NOTICE OF ATTORNEY APPEARANCE Lara Elizabeth Pomerantz appearing for USA. (Pomerantz, Lara) (Entered: 08/20/2020)
08/20/2020	50	SEALED DOCUMENT placed in vault. (mhe) (Entered: 08/27/2020)
08/21/2020	46	LETTER RESPONSE in Opposition by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Maurene Comey dated August 21, 2020 re: 43 LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated August 17, 2020 re: Request for Permission to Submit Letter Motion in Excess of Three Pages .. (Rossmiller, Alex) (Entered: 08/21/2020)
08/21/2020	47	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Maurene Comey dated August 21, 2020 re: Proposed redactions to letter briefing, in

		response to the Court's Order of August 18, 2020 Document filed by USA. (Rossmiller, Alex) (Entered: 08/21/2020)
08/24/2020	48	LETTER MOTION addressed to Judge Alison J. Nathan from Laura A. Menninger dated August 24, 2020 re: Request to File Under Seal: Proposed Redactions to Request to Modify Protective Order and Reply in Support Thereof . Document filed by Ghislaine Maxwell. (Menninger, Laura) (Entered: 08/24/2020)
08/25/2020	49	MEMORANDUM OPINION AND ORDER: denying without prejudice 38 LETTER MOTION as to Ghislaine Maxwell (1). On August 10, 2020, the Defendant filed a letter motion related to two issues. Dkt. No. 38. First, the Defendant seeks an order directing the Government to disclose to defense counsel immediately the identities of the three alleged victims referenced in the indictment. Second, the Defendant seeks an order directing the Bureau of Prisons ("BOP") to release the Defendant into the general population and to provide her with increased access to the discovery materials. For the reasons that follow, Defendant's requests are DENIED without prejudice....[See this Memorandum Opinion And Order]... III. Conclusion: For the reasons stated above, Defendant's requests contained in Dkt. No. 38 are DENIED without prejudice. Following the close of discovery, the parties shall meet and confer on an appropriate schedule for pre−trial disclosures, including the disclosure of § 3500 material, exhibit lists, and witness lists, taking into account all relevant factors. The Government is hereby ORDERED to submit written status updates every 90 days detailing any material changes to the conditions of Ms. Maxwell's confinement, with particular emphasis on her access to legal materials and ability to communicate with defense counsel. SO ORDERED. (Signed by Judge Alison J. Nathan on 8/25/2020) (bw) (Entered: 08/25/2020)
09/02/2020	51	MEMORANDUMOPINION AND ORDER as to Ghislaine Maxwell: On August 17, 2020, Defendant Ghislaine Maxwell filed a sealed letter motion seeking an Order modifying the protective order in this case. Specifically, she sought a Court order allowing her to file under seal in certain civil cases ("Civil Cases") materials ("Documents") that she received in discovery from the Government in this case. She also sought permission to reference, but not file, other discovery material that the Government produced in this case. For the reasons that follow, Defendant's requests are DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 9/2/2020)(See MEMORANDUM OPINION AND ORDER as set forth) (lnl) (Entered: 09/02/2020)
09/02/2020	52	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan, from Jeffrey S. Pagliuca dated 8/17/2020 re: Defense counsel writes with redacted request to modify protective order. (ap) (Entered: 09/02/2020)
09/04/2020	55	NOTICE OF APPEAL by Ghislaine Maxwell from 51 Memorandum & Opinion. Filing fee $ 505.00, receipt number 465401266036. (tp) (Entered: 09/09/2020)
09/08/2020	53	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan dated 8/24/2020 re: Proposed Redactions to Request to Modify Protective Order. (jbo) (Entered: 09/08/2020)
09/08/2020	54	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan dated 8/24/2020 re: Reply in Support of Request to Modify Protective Order. (jbo) (Entered: 09/08/2020)
09/09/2020		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 55 Notice of Appeal. (tp) (Entered: 09/09/2020)
09/09/2020		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 55 Notice of Appeal were transmitted to the U.S. Court of Appeals. (tp) (Entered: 09/09/2020)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

MEMORANDUM
OPINION AND ORDER

ALISON J. NATHAN, District Judge:

On August 17, 2020, Defendant Ghislaine Maxwell filed a sealed letter motion seeking an Order modifying the protective order in this case.[1] Specifically, she sought a Court order allowing her to file under seal in certain civil cases ("Civil Cases") materials ("Documents") that she received in discovery from the Government in this case. She also sought permission to

[1] This Order will not refer to any redacted or otherwise confidential information, and as a result it will not be sealed. The Court will adopt the redactions to Defendant's August 17, 2020 letter motion that the Government proposed on August 21, 2020, and it will enter that version into the public docket. The Court's decision to adopt the Government's proposed redactions is guided by the three-part test articulated by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). Under this test, the Court must: (i) determine whether the documents in question are "judicial documents;" (ii) assess the weight of the common law presumption of access to the materials; and (iii) balance competing considerations against the presumption of access. *Id.* at 119-20. "Such countervailing factors include but are not limited to 'the danger of impairing law enforcement or judicial efficiency' and 'the privacy interests of those resisting disclosure.'" *Id.* at 120 (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir.1995) ("*Amodeo II*")). The Government's proposed redactions satisfy this test. First, the Court finds that the defendant's letter motion is "relevant to the performance of the judicial function and useful in the judicial process," thereby qualifying as a "judicial document" for purposes of the first element of the *Lugosch* test. *United States v. Amodeo* ("*Amodeo I*"), 44 F.3d 141, 145 (2d Cir. 1995). Second, the Court assumes that the common law presumption of access attaches, thereby satisfying the second element. But in balancing competing considerations against the presumption of access, the Court finds that the arguments the Government has put forth—including, most notably, the threat that public disclosure of the redacted sections would interfere with an ongoing grand jury investigation—favor the Government's proposed narrowly tailored redactions.

In light of this ruling, the parties are hereby ORDERED to meet and confer with respect to proposed redactions to the Defendant's reply letter, dated August 24, 2020 and the Defendant's August 24, 2020 letter addressing her proposed redactions to the Defendant's August 17, 2020 letter motion. The parties are further ORDERED to submit their proposed redactions no later than September 4, 2020; if the parties cannot agree on their proposed redactions, they shall submit a joint letter to the Court explaining the nature of their dispute.

reference, but not file, other discovery material that the Government produced in this case. For the reasons that follow, Defendant's requests are DENIED.

Under Federal Rule of Criminal Procedure 16(d)(1), a Court may enter a protective order only after it finds that good cause exists. Within this framework, the Federal Rules of Criminal Procedure leave it to the discretion of the Court to determine whether modification of an existing protective order is warranted.[2] To make that decision, the Court takes into account all relevant factors, including the parties' reliance on the protective order and whether the moving party has sufficiently substantiated a request to deviate from the *status quo* in the instant matter.

On July 30, 2020, this Court entered a protective order in this case, having determined that good cause existed. Dkt. No. 36. The parties agreed that a protective order was warranted. *See* Dkt. No. 35 at 1 ("The parties have met and conferred, resolving nearly all the issues relating to the proposed protective order."). The Defendant's Proposed Protective Order included a provision that stated that all discovery produced by the Government "[s]hall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action." Dkt. No. 29, Ex. A ¶ 1(a). That language was included in the Court's July 30, 2020 protective order. *See* Dkt. No. 36 ¶¶ 1(a), 10(a), 14(a). Shortly thereafter, the Government began to produce discovery.

Upon receipt of some of the discovery, the Defendant filed the instant request, which seeks modification of the protective order in order to use documents produced in the criminal

[2] In the civil context, there is a "strong presumption against the modification of a protective order." *In re Teligent, Inc.,* 640 F.3d 53, 59 (2d Cir. 2011) (citation omitted). Courts in the Second Circuit have applied the standard for modification of protective orders in the civil context to the criminal context. *See, e.g.*, *United States v. Calderon*, No. 3:15-CR-25 (JCH), 2017 WL 6453344, at *2 (D. Conn. Dec. 1, 2017) (applying the civil standard for the modification of a protective order in a criminal case); *United States v. Kerik*, No. 07-CR-1027 (LAP), 2014 WL 12710346 at *1 (S.D.N.Y. July 23, 2014) (same). *See also United States v. Morales*, 807 F.3d 717, 723 (5th Cir. 2015) (applying the standard for "good cause" in the civil context when evaluating whether to modify a protective order entered in a criminal case); *United States v. Wecht*, 484 F.3d 194, 211 (3rd Cir. 2007) (same).

case in other civil proceedings. She bases her request on the premise that disclosure of the Documents to the relevant judicial officers is allegedly necessary to ensure the fair adjudication of issues being litigated in those civil matters. But after fourteen single-spaced pages of heated rhetoric, the Defendant proffers no more than vague, speculative, and conclusory assertions as to why that is the case. She provides no coherent explanation of what argument she intends to make before those courts that requires the presentation of the materials received in discovery in this criminal matter under the existing terms of the protective order in this case. And she furnishes no substantive explanation regarding the relevance of the Documents to decisions to be made in those matters, let alone any explanation of why modifying the protective order in order to allow such disclosure is necessary to ensure the fair adjudication of those matters. In sum, the arguments the Defendant presents to the Court plainly fail to establish good cause. The Defendant's request is DENIED on this basis.

Indeed, good cause for the requested modification of the protective order is further lacking because, as far as this Court can discern, the *facts* she is interested in conveying to the judicial decisionmakers in the Civil Cases are already publicly available, including in the Government's docketed letter on this issue. *See* Dkt. No. 46. In the opening paragraph of her reply letter dated August 24, 2020, the Defendant states that she is essentially seeking to disclose under seal to certain judicial officers the following factual information:

1. Grand jury subpoenas were issued to an entity ("Recipient") after the Government opened a grand jury investigation into Jeffrey Epstein and his possible co-conspirators;
2. The Recipient concluded that it could not turn over materials responsive to the grand jury subpoena absent a modification of the civil protective orders in the civil cases;

3. In February 2019, the Government, *ex parte* and under seal, sought modification of those civil protective orders so as to permit compliance with the criminal grand jury subpoenas;
4. In April 2019, one court ("Court-1") permitted the modification and, subsequently, another court ("Court-2") did not;
5. That as a result of the modification of the civil protective order by Court-1, the Recipient turned over to the Government certain materials that had been covered by the protective order; and
6. That the Defendant learned of this information (sealed by other courts) as a result of Rule 16 discovery in this criminal matter.

With the exception of identifying the relevant judicial decision makers and specific civil matters, all of the information listed above is available in the public record, including in the letter filed on the public docket by the Government on this issue. *See* Dkt. No. 46. Although this Court remains in the dark as to why this information will be relevant to those courts, so that those courts can make their own determination, to the extent it would otherwise be prohibited by the protective order in this matter, the Court hereby permits the defendant to provide to the relevant courts under seal the above information, including the information identifying the relevant judicial decision makers and civil matters.

In addition, the Government has indicated that "there is no impediment to counsel making sealed applications to Court-1 and Court-2, respectively, to unseal the relevant materials." Dkt. No. 46 at 3 n.5. In her reply, the Defendant asserts that she is amenable to such a solution if the Court agrees with the Government that doing so would not contravene the protective order in this case. To the extent it would otherwise be prohibited by the protective

order in this matter, the Defendant may make unsealing applications to those Courts if she wishes.

SO ORDERED.

Dated: September 2, 2020
New York, New York

ALISON J. NATHAN
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: September 10, 2020
Docket #: 20-3061
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 RECORD ON APPEAL FILED

In the above referenced case the document indicated below has been filed in the Court.

____ Record on Appeal - Certified List

____ Record on Appeal - CD ROM

____ Record on Appeal - Paper Documents

_X__ Record on Appeal - Electronic Index

____ Record on Appeal - Paper Index

Inquiries regarding this case may be directed to 212-857-8503.

CA02db Intake

From: NYSD_ECF_Pool@nysd.uscourts.gov
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U.S. District Court

Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 9/9/2020 at 12:43 PM EDT and filed on 9/9/2020
Case Name: USA v. Maxwell
Case Number: 1:20-cr-00330-AJN
Filer:
Document Number: No document attached

Docket Text:
Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: [55] Notice of Appeal were transmitted to the U.S. Court of Appeals. (tp)

1:20-cr-00330-AJN-1 Notice has been electronically mailed to:

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1:20-cr-00330-AJN-1 Notice has been delivered by other means to:

APPEAL,ECF

U.S. District Court
Southern District of New York (Foley Square)
CRIMINAL DOCKET FOR CASE #: 1:20−cr−00330−AJN All Defendants

Case title: USA v. Maxwell Date Filed: 06/29/2020

Assigned to: Judge Alison J. Nathan

Defendant (1)

Ghislaine Maxwell
also known as
Sealed Defendant 1

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Pending Counts

18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS
(1)

18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX

Disposition

ACTS
(1s)

18:2422.F COERCION OR ENTICEMENT OFA MINOT TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS
(2)

18:2422.F COERCION OR ENTICEMENT OF MINOR TO ENGAGE IN ILLEGAL SEX ACTS
(2s)

18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY
(3)

18:371.F 18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY
(3s)

18:2423.F COERCION OR ENTICEMENT OF MINOR FEMALE (TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY)
(4)

18:2423.F TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY
(4s)

18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (PERJURY)
(5−6)

18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT
(5s−6s)

Highest Offense Level (Opening)

Felony

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

None

Plaintiff

USA

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Date Filed	#	Docket Text
06/29/2020	1	SEALED INDICTMENT as to Sealed Defendant 1 (1) count(s) 1, 2, 3, 4, 5−6. (jm) (Main Document 1 replaced on 7/2/2020) (jm). (Entered: 07/02/2020)
07/02/2020	2	Order to Unseal Indictment as to Sealed Defendant 1. (Signed by Magistrate Judge Katharine H. Parker on 7/2/20)(jm) (Entered: 07/02/2020)
07/02/2020		INDICTMENT UNSEALED as to Ghislaine Maxwell. (jm) (Entered: 07/02/2020)
07/02/2020		Case Designated ECF as to Ghislaine Maxwell. (jm) (Entered: 07/02/2020)
07/02/2020		Case as to Ghislaine Maxwell ASSIGNED to Judge Alison J. Nathan. (jm) (Entered: 07/02/2020)
07/02/2020		Attorney update in case as to Ghislaine Maxwell. Attorney Alex Rossmiller,Maurene Ryan Comey,Alison Gainfort Moe for USA added. (jm) (Entered: 07/02/2020)
07/02/2020	4	MOTION to detain defendant . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 07/02/2020)

07/02/2020		Arrest of Ghislaine Maxwell in the United States District Court − District of New Hampshire. (jm) (Entered: 07/06/2020)
07/05/2020	5	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Alex Rossmiller dated July 5, 2020 re: Request to Schedule Initial Appearance Document filed by USA. (Comey, Maurene) (Entered: 07/05/2020)
07/06/2020	6	Rule 5(c)(3) Documents Received as to Ghislaine Maxwell from the United States District Court − District of New Hampshire. (jm) (Entered: 07/06/2020)
07/06/2020	7	ORDER as to Ghislaine Maxwell. This matter has been assigned to me for all purposes. In its July 5, 2020 letter, the Government on behalf of the parties requested that the Court schedule an arraignment, initial appearance, and bail hearing in this matter in the afternoon of Friday, July 10. See Dkt. No. 5. In light of the COVID public health crisis, there are significant safety issues related to in−court proceedings. If the Defendant is willing to waive her physical presence, this proceeding will be conducted remotely. To that end, defense counsel should confer with the Defendant regarding waiving her physical presence. If the Defendant wishes to waive her physical presence for this proceeding, she and her counsel should sign the attached form in advance of the proceeding if feasible.If this proceeding is to be conducted remotely, there are protocols at the Metropolitan Detention Center that limit the times at which the Defendant could be produced so that she could appear by video. In the next week, the Defendant could be produced by video at either 9:00 a.m. on July 9, 2020 or sometime during the morning of July 14, 2020. Counsel are hereby ordered to meet and confer regarding scheduling for this initial proceeding in light of these constraints. If counsel does anticipate proceeding remotely, by 9:00 p.m. tonight, counsel should file a joint letter proposing a date and time for the proceeding consistent with this scheduling information, as well as a revised briefing schedule for the Defendant's bail application.SO ORDERED. (Signed by Judge Alison J. Nathan on 7/6/2020)(jbo) (Entered: 07/06/2020)
07/06/2020	8	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Mark S. Cohen dated July 6, 2020 re: Scheduling (Cohen, Mark) (Entered: 07/06/2020)
07/07/2020	9	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated July 7, 2020 re: scheduling Document filed by USA. (Rossmiller, Alex) (Entered: 07/07/2020)
07/07/2020	10	ORDER as to Ghislaine Maxwell. An arraignment, initial conference, and bail hearing in this matter is hereby scheduled to occur as a remote video/teleconference using an internet platform on July 14, 2020 at 1 p.m. In advance of the conference, Chambers will email counsel with further information on how to access the video conference. To optimize the quality of the video feed, only the Court, the Defendant, defense counsel, and counsel for the Government will appear by video for the proceeding; all others may access the audio of the public proceeding by telephone. Due to the limited capacity of the internet platform system, only one attorney per party may participate by video. Co−counsel, members of the press, and the public may access the audio feed of the proceeding by calling a dial−in number, which the Court will provide in advance of the proceeding by subsequent order. Given the high degree of public interest in this case, a video feed of the remote proceeding will be available for viewing in the Jury Assembly Room located at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY. Due to social distancing requirements, seating will be extremely limited; when capacity is reached no additional persons will be admitted. Per the S.D.N.Y. COVID−19 Courthouse Entry Program, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to arriving at the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. Please see the instructions, attached. Completing the questionnaire ahead of time will save time and effort upon entry. Only persons who meet the entry requirements established by the questionnaire and whose temperatures are below 100.4 degrees will be allowed to enter the courthouse. Face coverings that cover the nose and mouth must be worn at all times. Anyone who fails to comply with the COVID−19 protocols that have been adopted by the Court will be required to leave the courthouse. There are no exceptions. As discussed in the Court's previous order, defense counsel shall, if possible, discuss the Waiver of Right to be Present at Criminal Proceeding with the Defendant prior to the

		proceeding. See Dkt. No. 7. If the Defendant consents, and is able to sign the form (either personally or, in accordance with Standing Order 20−MC−174 of March 27, 2020, by defense counsel), defense counsel shall file the executed form at least 24 hours prior to the proceeding. In the event the Defendant consents, but counsel is unable to obtain or affix the Defendant's signature on the form, the Court will conduct an inquiry at the outset of the proceeding to determine whether it is appropriate for the Court to add the Defendant's signature to the form. Pursuant to 18 U.S.C. § 3771(c)(1), the Government must make their best efforts to see that crime victims are notified of, and accorded, the rights provided to them in that section. This includes [t]he right to reasonable, accurate, and timely notice of any public court proceeding... involving the crime or of any release... of the accused and "[t]he right to be reasonably heard at any public proceeding in the district court involving release." Id. § 3771(a)(2), (4). The Court will inquire with the Government as to the extent of those efforts. So that appropriate logistical arrangements can be made, the Government shall inform the Court by email within 24 hours in advance of the proceeding if any alleged victim wishes to be heard on the question of detention pending trial. Finally, the time between the Defendant's arrest and July 6, 2020 is excluded under the Speedy Trial Act due to the delay involved in transferring the Defendant from another district. See 18 U.S.C. § 3161(h)(1)(F). And the Court further excludes time under the Speedy Trial Act from today through July 14, 2020. Due to the logistical issues involved in conducting a remote proceeding, the Court finds "that the ends of justice served by [this exclusion] outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). The exclusion is also supported by the need for the parties to discuss a potential protective order, which will facilitate the timely production of discovery in a manner protective of the rights of third parties. See Dkt. No. 5. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/7/2020)(jbo) (Entered: 07/07/2020)
07/08/2020	11	MEMO ENDORSEMENT as to Ghislaine Maxwell on 9 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated July 7, 2020 re: scheduling. ENDORSEMENT: The Court hereby sets the following briefing schedule. The Defense response is due by 1:00 p.m. on July 10, 2020. The Government reply is due by 1:00 p.m. on July 13, 2020. Additionally, defense counsel is ordered to file notices of appearance on the docket by the end of the day today. SO ORDERED. (Responses due by 7/10/2020. Replies due by 7/13/2020.) (Signed by Judge Alison J. Nathan on 7/8/2020) (lnl) (Entered: 07/08/2020)
07/08/2020	12	NOTICE OF ATTORNEY APPEARANCE: Mark Stewart Cohen appearing for Ghislaine Maxwell. Appearance Type: Retained. (Cohen, Mark) (Entered: 07/08/2020)
07/08/2020	13	NOTICE OF ATTORNEY APPEARANCE: Christian R. Everdell appearing for Ghislaine Maxwell. Appearance Type: Retained. (Everdell, Christian) (Entered: 07/08/2020)
07/08/2020	14	NOTICE OF ATTORNEY APPEARANCE: Laura A. Menninger appearing for Ghislaine Maxwell. Appearance Type: Retained. (Menninger, Laura) (Entered: 07/08/2020)
07/08/2020	15	MOTION for Jeffrey S. Pagliuca to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC−20605229. **Motion and supporting papers to be reviewed by Clerk's Office staff.** Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit Declaration of Jeffrey S. Pagliuca, # 2 Exhibit Certificate of Good Standing, # 3 Text of Proposed Order Proposed Order)(Pagliuca, Jeffrey) (Entered: 07/08/2020)
07/08/2020	17	(S1) SUPERSEDING INDICTMENT FILED as to Ghislaine Maxwell (1) count(s) 1s, 2s, 3s, 4s, 5s−6s. (jm) (Entered: 07/10/2020)
07/09/2020		**>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 15 MOTION for Jeffrey S. Pagliuca to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC−20605229. Motion and supporting papers to be reviewed by Clerk's Office staff. The document has been reviewed and there are no deficiencies. (aea)** (Entered: 07/09/2020)
07/09/2020	16	ORDER as to Ghislaine Maxwell. As discussed in its previous order, the Court will hold an arraignment, initial conference, and bail hearing in this matter remotely as a video/teleconference on July 14, 2020 at 1 pm. Members of the press and the public in the United States may access the live audio feed of the proceeding by calling 855−268−7844 and using access code 32091812# and PIN 9921299#. Those outside of

		the United States may access the live audio feed by calling 214−416−0400 and using the same access code and PIN. These phone lines can accommodate approximately 500 callers on a first come, first serve basis. The Court will provide counsel for both sides an additional dial−in number to be used to ensure audio access to the proceeding for non−speaking co−counsel, alleged victims, and any family members of the Defendant. The United States Attorney's Office should email Chambers with information regarding any alleged victims who are entitled, pursuant to 18 U.S.C. §3771(a)(4), to be heard at the bail hearing and who wish to be heard. The Court will then provide information as to the logistics for their dial−in access. As the Court described in a previous order, members of the press and public may watch and listen to the live video feed in the Jury Assembly Room, at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street. See Dkt. No. 10. However, in light of COVID−19, seating will be limited to approximately 60 seats in order to enable appropriate social distancing and ensure public safety. Counsel for the Defendant and the Government may contact Chambers by email if there is a request to accommodate alleged victims or family members of the Defendant. Members of the credentialed in−house press corps may contact the District Executive's Office about seating. Otherwise, all seating will be allocated on a first come, first serve basis and in accordance with the S.D.N.Y. COVID−19 Courthouse Entry Program and this Court's previous order of July 7, 2020. See Dkt. No. 10. If conditions change or the Court otherwise concludes that allowing for in−person viewing of the video feed at the courthouse is not consistent with public health, the Court may provide audio access by telephone only. Any photographing, recording, or rebroadcasting of federal court proceedings is prohibited by law. Violation of these prohibitions may result in fines or sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/9/2020)(jbo) (Entered: 07/09/2020)
07/10/2020	18	MEMORANDUM in Opposition by Ghislaine Maxwell re 4 MOTION to detain defendant .. (Cohen, Mark) (Entered: 07/10/2020)
07/10/2020	19	NOTICE OF ATTORNEY APPEARANCE: Mark Stewart Cohen appearing for Ghislaine Maxwell. Appearance Type: Retained. (Cohen, Mark) (Entered: 07/10/2020)
07/10/2020	20	NOTICE OF ATTORNEY APPEARANCE: Christian R. Everdell appearing for Ghislaine Maxwell. Appearance Type: Retained. (Everdell, Christian) (Entered: 07/10/2020)
07/10/2020	21	WAIVER of Personal Appearance at Arraignment and Entry of Plea of Not Guilty by Ghislaine Maxwell. (Everdell, Christian) (Entered: 07/10/2020)
07/13/2020	22	REPLY MEMORANDUM OF LAW in Support by USA as to Ghislaine Maxwell re: 4 MOTION to detain defendant . . (Moe, Alison) (Entered: 07/13/2020)
07/13/2020		ORDER granting 15 Motion for Jeffrey Pagliuca to Appear Pro Hac Vice as to Ghislaine Maxwell (1). (Signed by Judge Alison J. Nathan on 7/13/2020) (kwi) (Entered: 07/13/2020)
07/14/2020	23	ORDER as to Ghislaine Maxwell. For the reasons stated on the record at today's proceeding, the Governments motion to detain the Defendant pending trial is hereby GRANTED (Signed by Judge Alison J. Nathan on 7/14/20)(jw) (Entered: 07/14/2020)
07/14/2020		Minute Entry for proceedings held before Judge Alison J. Nathan:Arraignment as to Ghislaine Maxwell (1) Count 1s,2s,3s,4s,5s−6s held on 7/14/2020. Defendant Ghislaine Maxwell present by video conference with attorney Mark Cohen present by video conference, AUSA Alison Moe, Alex Rossmiller and Maurene Comey for the government present by video conference, Pretrial Service Officer Lea Harmon present by telephone and Court Reporter Kristine Caraannante. Defendant enters a plea of Not Guilty to the S1 indictment. Trial set for July 12, 2021. See Order. Time is excluded under the Speedy Trial Act from today until July 12, 2021. Bail is denied. Defendant is remanded. See Transcript. (jw) (Entered: 07/14/2020)
07/14/2020		Minute Entry for proceedings held before Judge Alison J. Nathan: Plea entered by Ghislaine Maxwell (1) Count 1s,2s,3s,4s,5s−6s Not Guilty. (jw) (Entered: 07/14/2020)

07/14/2020	24	Waiver of Right to be Present at Criminal Proceeding as to Ghislaine Maxwell re: Arraignment, Bail Hearing, Conference. (jw) (Entered: 07/14/2020)
07/15/2020	25	ORDER as to Ghislaine Maxwell. Initial non−electronic discovery, generally to include search warrant applications and subpoena returns, is due by Friday, August 21, 2020. Completion of discovery, to include electronic materials, is due by Monday, November 9, 2020. Motions are due by Monday, December 21, 2020. Motion responses are due by Friday, January 22, 2021. Motion replies are due by Friday, February 5, 2021. Trial is set for Monday, July 12, 2021 (Discovery due by 8/21/2020., Motions due by 12/21/2020) (Signed by Judge Alison J. Nathan on 7/15/20)(jw) (Entered: 07/15/2020)
07/21/2020	26	ORDER as to Ghislaine Maxwell: The Court has received a significant number of letters and messages from non−parties that purport to be related to this case. These submissions are either procedurally improper or irrelevant to the judicial function. Therefore, they will not be considered or docketed. The Court will accord the same treatment to any similar correspondence it receives in the future. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/21/2020) (lnl) (Entered: 07/21/2020)
07/21/2020	27	LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated July 21, 2020 re: Local Criminal Rule 23.1 . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 07/21/2020)
07/23/2020	28	ORDER as to Ghislaine Maxwell: The Defense has moved for an order "prohibiting the Government, its agents and counsel for witnesses from making extrajudicial statements concerning this case." Dkt. No. 27 at 1. The Court firmly expects that counsel for all involved parties will exercise great care to ensure compliance with this Court's local rules, including Local Criminal Rule 23.1, and the rules of professional responsibility. In light of this clear expectation, the Court does not believe that further action is needed at this time to protect the Defendant's right to a fair trial by an impartial jury. Accordingly, it denies the Defendant's motion without prejudice. But the Court warns counsel and agents for the parties and counsel for potential witnesses that going forward it will not hesitate to take appropriate action in the face of violations of any relevant rules. The Court will ensure strict compliance with those rules and will ensure that the Defendant's right to a fair trial will be safeguarded. (Signed by Judge Alison J. Nathan on 7/23/2020) (ap) (Entered: 07/23/2020)
07/27/2020	29	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 27, 2020 re: Proposed Protective Order . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A (Proposed Protective Order))(Everdell, Christian) (Entered: 07/27/2020)
07/27/2020	30	AFFIDAVIT of Christian R. Everdell by Ghislaine Maxwell. (Everdell, Christian) (Entered: 07/27/2020)
07/27/2020	31	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe dated July 27, 2020 re: requesting until 5 p.m. tomorrow to respond to defense counsel's letter, filed July 27, 2020 Document filed by USA. (Moe, Alison) (Entered: 07/27/2020)
07/27/2020	32	MEMO ENDORSEMENT as to Ghislaine Maxwell on 31 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe dated July 27, 2020 re: requesting until 5 p.m. tomorrow to respond to defense counsel's letter, filed July 27, 2020. ENDORSEMENT: The Government's response to the Defense's letter is due by 5 p.m. on July 28, 2020. The Defense may file a reply by 5 p.m. on July 29, 2020. Before the Government's response is filed, the parties must meet and confer by phone regarding this issue, and any response from the Government must contain an affirmation that the parties have done so. SO ORDERED. (Responses due by 7/28/2020. Replies due by 7/29/2020.) (Signed by Judge Alison J. Nathan on 7/27/2020) (lnl) (Entered: 07/27/2020)
07/28/2020	33	LETTER RESPONSE to Motion by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated July 28, 2020 re: 29 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 27, 2020 re: Proposed Protective Order .. (Attachments: # 1 Exhibit A (proposed protective order))(Rossmiller, Alex) (Entered: 07/28/2020)

07/28/2020	34	AFFIDAVIT of Alex Rossmiller by USA as to Ghislaine Maxwell. (Rossmiller, Alex) (Entered: 07/28/2020)
07/29/2020	35	LETTER REPLY TO RESPONSE to Motion by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 29, 2020 re 29 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 27, 2020 re: Proposed Protective Order .. (Everdell, Christian) (Entered: 07/29/2020)
07/30/2020	36	PROTECTIVE ORDER as to Ghislaine Maxwell...regarding procedures to be followed that shall govern the handling of confidential material. SO ORDERED: (Signed by Judge Alison J. Nathan on 7/30/2020)(bw) (Entered: 07/31/2020)
07/30/2020	37	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. Both parties have asked for the Court to enter a protective order. While they agree on most of the language, two areas of dispute have emerged. First, Ms. Maxwell seeks language allowing her to publicly reference alleged victims or witnesses who have spoken on the public record to the media or in public fora, or in litigation relating to Ms. Maxwell or Jeffrey Epstein. Second, Ms. Maxwell seeks language restricting potential Government witnesses and their counsel from using discovery materials for any purpose other than preparing for the criminal trial in this action. The Government has proposed contrary language on both of these issues. For the following reasons, the Court adopts the Government's proposed protective order Under Federal Rule of Criminal Procedure 16(d)(1), "[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief." The good cause standard "requires courts to balance several interests, including whether dissemination of the discovery materials inflicts hazard to others... whether the imposition of the protective order would prejudice the defendant," and "the public's interest in the information." United States v. Smith, 985 F. Supp. 2d 506, 522 (S.D.N.Y. 2013). The party seeking to restrict disclosure bears the burden of showing good cause. Cf. Gambale v. Deutsche Bank AG, 377 F.3d 133, 142 (2d Cir. 2004). First, the Court finds that the Government has met its burden of showing good cause with regard to restricting the ability of Ms. Maxwell to publicly reference alleged victims and witnesses other than those who have publicly identified themselves in this litigation. As a general matter, it is undisputed that there is a strong and specific interest in protecting the privacy of alleged victims and witnesses in this case that supports restricting the disclosure of their identities. Dkt. No. 29 at 3 (acknowledging that as a baseline the protective order should "prohibit[] Ms. Maxwell, defense counsel, and others on the defense team from disclosing or disseminating the identity of any alleged victim or potential witness referenced in the discovery materials"); see also United States v. Corley, No. 13−cr−48, 2016 U.S. Dist. LEXIS 194426, at *11 (S.D.N.Y. Jan. 15, 2016). The Defense argues this interest is significantly diminished for individuals who have spoken on the public record about Ms. Maxwell or Jeffrey Epstein, because they have voluntarily chosen to identify themselves. But not all accusations or public statements are equal. Deciding to participate in or contribute to a criminal investigation or prosecution is a far different matter than simply making a public statement "relating to" Ms. Maxwell or Jeffrey Epstein, particularly since such a statement might have occurred decades ago and have no relevance to the charges in this case. These individuals still maintain a significant privacy interest that must be safeguarded. The exception the Defense seeks is too broad and risks undermining the protections of the privacy of witnesses and alleged victims that is required by law. In contrast, the Government's proffered language would allow Ms. Maxwell to publicly reference individuals who have spoken by name on the record in this case. It also allows the Defense to "referenc[e] the identities of individuals they believe may be relevant... to Potential Defense Witnesses and their counsel during the course of the investigation and preparation of the defense case at trial." Dkt. No. 33−1, 5. This proposal adequately balances the interests at stake. And as the Government's letter notes, see Dkt. No. 33 at 4, to the extent that the Defense needs an exception to the protective order for a specific investigative purpose, they can make applications to the Court on a case−by−case basis. Second, restrictions on the ability of potential witnesses and their counsel to use discovery materials for purposes other than preparing for trial in this case are unwarranted. The request appears unprecedented despite the fact that there have been many high−profile criminal matters that had related civil litigation. The Government labors under many restrictions including Rule 6(e) of the Federal Rules of Criminal Procedure, the Privacy Act of 1974, and other policies of the Department of Justice and the U.S. Attorney's Office for the Southern

		District of New York, all of which the Court expects the Government to scrupulously follow. Furthermore, the Government indicates that it will likely only provide potential witnesses with materials that those witnesses already have in their possession. See Dkt. No. 33 at 6. And of course, those witnesses who do testify at trial would be subject to examination on the record as to what materials were provided or shown to them by the Government. Nothing in the Defense's papers explains how its unprecedented proposed restriction is somehow necessary to ensure a fair trial. For the foregoing reasons, the Court adopts the Government's proposed protective order, which will be entered on the docket. This resolves Dkt. No. 29. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/30/2020)(bw) (Entered: 07/31/2020)
08/10/2020	38	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 08/10/2020)
08/10/2020	39	AFFIDAVIT of Christian R. Everdell by Ghislaine Maxwell. (Everdell, Christian) (Entered: 08/10/2020)
08/11/2020	40	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 38 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access. ENDORSEMENT: The Government is hereby ORDERED to respond to the Defendant's letter motion by Thursday, August 13, 2020. The Defendant's reply, if any, is due on or before Monday, August 17, 2020. (Responses due by 8/13/2020. Replies due by 8/17/2020) (Signed by Judge Alison J. Nathan on 8/11/2020) (ap) (Entered: 08/11/2020)
08/13/2020	41	LETTER RESPONSE in Opposition by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated August 13, 2020 re: 38 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access .. (Rossmiller, Alex) (Entered: 08/13/2020)
08/17/2020	42	LETTER REPLY TO RESPONSE to Motion by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 17, 2020 re 38 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access .. (Everdell, Christian) (Entered: 08/17/2020)
08/17/2020	43	LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated August 17, 2020 re: Request for Permission to Submit Letter Motion in Excess of Three Pages . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 08/17/2020)
08/18/2020	44	ORDER as to Ghislaine Maxwell: On August 17, 2020, the Defendant filed a letter motion seeking a modification of this Court's Protective Order, which the Court entered on July 30, 2020. Defendant also moves to file that letter motion under seal. The Governments opposition to Defendant's letter motion is hereby due Friday, August 21 at 12 p.m. The Defendant's reply is due on Monday, August 24 at 12 p.m. The parties shall propose redactions to the letter briefing on this issue. Alternatively, the parties shall provide support and argument for why the letter motions should be sealed in their entirety. SO ORDERED. (Responses due by 8/21/2020. Replies due by 8/24/2020.) (Signed by Judge Alison J. Nathan on 8/18/2020) (lnl) (Entered: 08/18/2020)
08/20/2020	45	NOTICE OF ATTORNEY APPEARANCE Lara Elizabeth Pomerantz appearing for USA. (Pomerantz, Lara) (Entered: 08/20/2020)
08/20/2020	50	SEALED DOCUMENT placed in vault. (mhe) (Entered: 08/27/2020)
08/21/2020	46	LETTER RESPONSE in Opposition by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Maurene Comey dated August 21, 2020 re: 43 LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated August 17, 2020 re: Request for Permission to Submit Letter Motion in Excess of Three Pages .. (Rossmiller, Alex) (Entered: 08/21/2020)
08/21/2020	47	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Maurene Comey dated August 21, 2020 re: Proposed redactions to letter briefing, in

		response to the Court's Order of August 18, 2020 Document filed by USA. (Rossmiller, Alex) (Entered: 08/21/2020)
08/24/2020	48	LETTER MOTION addressed to Judge Alison J. Nathan from Laura A. Menninger dated August 24, 2020 re: Request to File Under Seal: Proposed Redactions to Request to Modify Protective Order and Reply in Support Thereof . Document filed by Ghislaine Maxwell. (Menninger, Laura) (Entered: 08/24/2020)
08/25/2020	49	MEMORANDUM OPINION AND ORDER: denying without prejudice 38 LETTER MOTION as to Ghislaine Maxwell (1). On August 10, 2020, the Defendant filed a letter motion related to two issues. Dkt. No. 38. First, the Defendant seeks an order directing the Government to disclose to defense counsel immediately the identities of the three alleged victims referenced in the indictment. Second, the Defendant seeks an order directing the Bureau of Prisons ("BOP") to release the Defendant into the general population and to provide her with increased access to the discovery materials. For the reasons that follow, Defendant's requests are DENIED without prejudice....[See this Memorandum Opinion And Order]... III. Conclusion: For the reasons stated above, Defendant's requests contained in Dkt. No. 38 are DENIED without prejudice. Following the close of discovery, the parties shall meet and confer on an appropriate schedule for pre−trial disclosures, including the disclosure of § 3500 material, exhibit lists, and witness lists, taking into account all relevant factors. The Government is hereby ORDERED to submit written status updates every 90 days detailing any material changes to the conditions of Ms. Maxwell's confinement, with particular emphasis on her access to legal materials and ability to communicate with defense counsel. SO ORDERED. (Signed by Judge Alison J. Nathan on 8/25/2020) (bw) (Entered: 08/25/2020)
09/02/2020	51	MEMORANDUMOPINION AND ORDER as to Ghislaine Maxwell: On August 17, 2020, Defendant Ghislaine Maxwell filed a sealed letter motion seeking an Order modifying the protective order in this case. Specifically, she sought a Court order allowing her to file under seal in certain civil cases ("Civil Cases") materials ("Documents") that she received in discovery from the Government in this case. She also sought permission to reference, but not file, other discovery material that the Government produced in this case. For the reasons that follow, Defendant's requests are DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 9/2/2020)(See MEMORANDUM OPINION AND ORDER as set forth) (lnl) (Entered: 09/02/2020)
09/02/2020	52	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan, from Jeffrey S. Pagliuca dated 8/17/2020 re: Defense counsel writes with redacted request to modify protective order. (ap) (Entered: 09/02/2020)
09/04/2020	55	NOTICE OF APPEAL by Ghislaine Maxwell from 51 Memorandum & Opinion. Filing fee $ 505.00, receipt number 465401266036. (tp) (Entered: 09/09/2020)
09/08/2020	53	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan dated 8/24/2020 re: Proposed Redactions to Request to Modify Protective Order. (jbo) (Entered: 09/08/2020)
09/08/2020	54	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan dated 8/24/2020 re: Reply in Support of Request to Modify Protective Order. (jbo) (Entered: 09/08/2020)
09/09/2020		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 55 Notice of Appeal. (tp) (Entered: 09/09/2020)
09/09/2020		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 55 Notice of Appeal were transmitted to the U.S. Court of Appeals. (tp) (Entered: 09/09/2020)

ACKNOWLEDGMENT AND NOTICE OF APPEARANCE

Short Title: United States of America v. Ghislaine Maxwell Docket No.: No. 20-3061

Lead Counsel of Record (name/firm) or Pro se Party (name): Laura A. Menninger /Haddon Morgan & Foreman, P.C.

Appearance for (party/designation): Defendant-Appellant 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: Laura A. Menninger
Firm: Haddon, Morgan & Foreman, P.C.
Address: 150 E. 10th Ave., Denver, CO 80203
Telephone: 303-831-7364 Fax: 303-831-2628
Email: lmenninger@hmflaw.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: Giuffre v. Maxwell, No. 20-2413 (Ms. Maxwell will be filing a motion to consolidate this case with No. 20-2413); Brown v. Maxwell, No. 18-2868 (consolidated with No. 16-3945)

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/ Laura A. Menninger
Type or Print Name: Laura A. Menninger
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
CRIMINAL APPEAL TRANSCRIPT INFORMATION - FORM B

TO BE COMPLETED BY ATTORNEY:

CASE NAME: United States of America, Plaintiff **v.**
Ghislaine Maxwell, Defendant

DOCKET NUMBER: No. 20-3061

COUNSEL'S NAME: Laura A. Menninger

COUNSEL'S ADDRESS: 150 E. 10th Ave.
Denver, CO 80203

COUNSEL'S PHONE: 303-831-7364

QUESTIONNAIRE

☐ I am ordering a transcript.
☑ I am not ordering a transcript. Reason: ☐ Daily copy available ☐ U.S. Atty. placed order ☑ Other (attach explanation)

****Explanation: There is no transcript because the district court decided the motion on the papers without a hearing**

TRANSCRIPT ORDER

Prepare transcript of

☐ Pre-trial proceedings: N/A
(Description & Dates)

☐ Trial: N/A
(Description & Dates)

☐ Sentencing: N/A
(Description & Dates)

☐ Post-trial proceedings: N/A
(Description & Dates)

I, N/A, hereby certify that I will make satisfactory arrangements with
(counsel's name)

the court reporter for payment of the costs of the transcript in accordance with FRAP 10(b).

Method of payment: ☐ Funds ☐ CJA Form 24

s/ Laura A. Menninger
Counsel's Signature

9/10/2020
Date

TO BE COMPLETED BY COURT REPORTER AND FORWARDED TO COURT OF APPEALS:

ACKNOWLEDGMENT

Date order received: _____ Estimated Number of Pages: _____

Estimated completion date: _____

_____
Court Reporter's Signature

_____
Date

Attorney(s): Send completed form to the U.S. District Court as that court may require and send copies to the Court of Appeals, U.S. Attorney's Office, and Court Reporter.
Court Reporter(s): Send completed acknowledgement to the Court of Appeals Clerk.

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States of America v. Ghislaine Maxwell Docket No.: No. 20-3061

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

Name: Adam Mueller

Firm: Haddon, Morgan & Foreman, P.C.

Address: 150 E. 10th Ave., Denver, CO 80203

Telephone: 303-831-7364 Fax: 303-832-2628

E-mail: amueller@hmflaw.com

Appearance for: Defendant-Appellant Ghislaine Maxwell
(party/designation)

Select One:

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

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

☑ Additional counsel (co-counsel with: Laura A. Menninger/Haddon, Morgan & Foreman, P.C.)
(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/ Adam Mueller

Type or Print Name: Adam Mueller

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States of America v. Ghislaine Maxwell Docket No.: No. 20-3061

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

Name: Ty Gee

Firm: Haddon, Morgan & Foreman, P.C.

Address: 150 E. 10th Ave., Denver, CO 80203

Telephone: 303-831-7364 Fax: 303-832-2628

E-mail: tgee@hmflaw.com

Appearance for: Defendant-Appellant Ghislaine Maxwell
(party/designation)

Select One:

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

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

☑ Additional counsel (co-counsel with: Laura A. Menninger/Haddon, Morgan & Foreman, P.C.)
(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/ Ty Gee

Type or Print Name: Ty Gee

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States v. Maxwell Docket No.: 20-3061

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

Name: Maurene Comey

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

Address: One St. Andrew's Plaza

Telephone: (212) 637-2324 Fax: (212) 637-2387

E-mail: maurene.comey@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 S. 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 N/A OR

☐ I applied for admission on _____.

Signature of Counsel: /s/Maurene Comey

Type or Print Name: Maurene Comey

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States v. Maxwell Docket No.: 20-3061

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

Name: Lara Pomerantz

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

Address: One St. Andrew's Plaza

Telephone: (212) 637-2343 Fax: _____

E-mail: lara.pomerantz@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 S. 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/ Lara Pomerantz

Type or Print Name: Lara Pomerantz

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): 20-3061 Caption [use short title] United States v. Maxwell

Motion for: Leave to File Unredacted Motion to Consolidate under Seal

Set forth below precise, complete statement of relief sought:

Leave to File Unredacted Motion to Consolidate under Seal

MOVING PARTY: Ghislaine Maxwell
☐ Plaintiff ☑ Defendant
☑ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY: United States of America

MOVING ATTORNEY: Adam Mueller

OPPOSING ATTORNEY: Maurene Comey

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

Haddon, Morgan & Foreman, P.C.
150 E. 10th Ave., Denver, CO 80203
303-831-7364 amueller@hmflaw.com

Assistant U.S. Attorney, SDNY
1 St. Andrew's Plaza, New York, NY 10007
212-637-2324 Maurene.Comey@usdoj.gov

Court-Judge/Agency appealed from: Judge Nathan, S.D.N.Y.

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 INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

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

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

Signature of Moving Attorney:
s/ Adam Mueller **Date:** 9/10/2020

Service by: ☑ CM/ECF ☑ Other [Attach proof of service]

20-3061

United States Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

GHISLAINE MAXWELL,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, 20-CR-330 (AJN)

Unopposed Motion to File Unredacted Motion to Consolidate Under Seal

Defendant-Appellant Ghislaine Maxwell, through her attorneys Haddon, Morgan and Foreman, P.C., moves unopposed for leave to file her Unredacted Motion to Consolidate under seal. As grounds for this request, Ms. Maxwell states:

Ms. Maxwell has filed with this Court a motion to consolidate two appeals: *United States v. Maxwell*, No. 20-3061 (the "criminal case," Case No. 20-CR-330 (AJN) (S.D.N.Y.)), and *Giuffre v. Maxwell*, Case No. 20-2413 (the "civil case," Case No. 15-CV-7433 (LAP) (S.D.N.Y.)). The criminal case addresses an order by

Judge Nathan refusing to modify a criminal protective order. The civil case addresses an order by Judge Preska unsealing certain deposition material.

Among other arguments for consolidation of the two appeals, Ms. Maxwell contends that she should be permitted to share with Judge Preska critical information Ms. Maxwell learned from Judge Nathan.

But the protective order issued by Judge Nathan prevents Ms. Maxwell from disclosing this information to Judge Preska or from telling this Court about the information in the civil appeal. By contrast, the protective order allows Ms. Maxwell to tell this Court about the information in the criminal appeal, though only under seal since it is confidential and sealed in the district court criminal case.

Ms. Maxwell's Unredacted Motion to Consolidate explains this situation and describes the critical information. But to comply with criminal protective order, Ms. Maxwell can file an unredacted copy of the Motion to Consolidate *only* under seal with this Court, and then only in the criminal appeal, Case No. 20-3061.

Therefore, in compliance with the criminal protective order, Ms. Maxwell will publicly file on ECF a redacted copy of the Motion to Consolidate in both appeals along with all but one of the exhibits—Exhibit B, which was filed under seal in the district court.

In turn, she asks for leave to file the unredacted copy of the Motion to Consolidate in the criminal appeal under seal with this Court, along with Exhibit B.

The government does not oppose this Motion for Leave to File under Seal, although it does oppose the Motion to Consolidate.

For these reasons, Ms. Maxwell requests leave to file her Unredacted Motion to Consolidate under seal.

September 10, 2020.

Respectfully submitted,

s/ Adam Mueller
Laura A. Menninger
Ty Gee
Adam Mueller
HADDON, MORGAN AND FOREMAN, P.C.
150 East 10th Avenue
Denver, CO 80203
Tel 303.831.7364
Fax 303.832.2628
lmenninger@hfmlaw.com
tgee@hmflaw.com
amueller@hmflaw.com
Counsel for Defendant-Appellant Ghislaine Maxwell

Certificate of Service

I certify that on September 10, 2020, I filed this *Unopposed Motion to File Motion to Consolidate under Seal* with the Court via CM/ECF, which will send notification of the filing to all counsel of record. I also certify that I emailed a copy of this motion to all counsel of record.

s/ Nicole Simmons

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): 20-3061 Caption [use short title]

Motion for: to Consolidate Appeals United States v. Maxwell

Set forth below precise, complete statement of relief sought:

Request that this Court consolidate Giuffre v. Maxwell, No. 20-2413, with United States v. Maxwell, No. 20-3061

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

☐ Plaintiff ☑ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Adam Mueller **OPPOSING ATTORNEY:** Maurene Comey

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

Haddon, Morgan & Foreman, P.C.
150 E. 10th Ave., Denver, CO 80203
303-831-7364 amueller@hmflaw.com

Assistant U.S. Attorney, SDNY
1 St. Andrew's Plaza, New York, NY 10007
212-637-2324 Maurene.Comey@usdoj.gov

Court-Judge/Agency appealed from: Judge Nathan, S.D.N.Y.

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 INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

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

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

Signature of Moving Attorney:
s/ Adam Mueller **Date:** 9/10/2020 Service by: ☑ CM/ECF ☑ Other [Attach proof of service]

Nos. 20-2413 & 20-3061

United States Court of Appeals for the Second Circuit

VIRGINIA L. GIUFFRE, *Plaintiff-Appellee*, v. GHISLAINE MAXWELL, *Defendant- Appellant*.	On Appeal from the U.S. District Court for the Southern District of New York No. 15-CV-7433 (LAP) The Honorable Loretta A. Preska, U.S. District Judge
UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. GHISLAINE MAXWELL, *Defendant-Appellant*.	On Appeal from the U.S. District Court for the Southern District of New York No. 20-CR-330 (AJN) The Honorable Alison J. Nathan, U.S. District Judge

Ghislaine Maxwell's Motion to Consolidate Appeals

Defendant-Appellant Ghislaine Maxwell moves this Court to consolidate *United States v. Maxwell*, No. 20-3061 (the "criminal case," Case No. 20-CR-330 (AJN) (S.D.N.Y.)), with the pending appeal in *Giuffre v. Maxwell*, Case No. 20-2413 (the "civil case," Case No. 15-CV-7433 (LAP) (S.D.N.Y.)).[1]

Background

These two appeals are inextricably intertwined. As Ms. Maxwell explained in her opening brief in the civil case, the district court unsealed the deposition material without knowing critical new information discovered to Ms. Maxwell in the criminal case bearing directly on whether the deposition material should be unsealed. *Giuffre v. Maxwell*, Case No. 20-2413, OB, pp 13–15.

[redacted]

[1] Since Ms. Maxwell seeks to consolidate both appeals, she is filing this motion in both cases. But because of the protective order in the criminal case, EXHIBIT A, Ms. Maxwell can file an unredacted version of this motion in the criminal appeal only. She cannot file an unredacted version of this motion in the civil appeal.

Accordingly, in the criminal appeal, Ms. Maxwell will file a sealed and unredacted copy of this motion along with a motion for leave to file under seal. She will publicly file on ECF the redacted copy of this motion.

In the civil appeal, Ms. Maxwell will file on ECF the redacted copy of this motion only.

[redacted], they repeatedly downplayed and dismissed

[2] [redacted]

arguments made by Ms. Maxwell that material should remain sealed because of the potential for a criminal investigation. *E.g.*, EXHIBIT C, p 2. For example, when Ms. Maxwell moved to stay discovery in *Farmer v. Indyke*, Case No. 19-cv-10475 (LGS-DCF) (S.D.N.Y.), due to the pending criminal investigation, Ms. Giuffre opposed the motion on the grounds that Ms. Maxwell could not show the existence or scope of any such criminal investigation, [redacted]

> Maxwell has provided no information about the subject matter of the criminal investigation into Epstein's co-conspirators, the status of the investigation, or even disclosed whether she herself is a target of the Southern District's investigation. When Plaintiff's counsel asked Maxwell's counsel for information about the criminal investigation during their meet and confer, Maxwell's counsel refused to provide any details.

EX. C, p 2.

[redacted]

[redacted], after the parties had briefed the motion to unseal the deposition material and after Judge Preska ordered the deposition material unsealed, Ms. Maxwell asked Judge Preska to briefly stay the unsealing process. EXHIBIT D, p 1. But because of the criminal protective order, all Ms. Maxwell could reveal to Judge Preska was that she was aware of critical new information. EX. D, p 1. She couldn't tell Judge Preska what that information was. EX. D, pp 1–2.

Judge Preska declined to stay the unsealing process but said he would reevaluate if Judge Nathan modified the criminal protective order and allowed Ms. Maxwell to share with Judge Preska, under seal, all she learned as described above. EXHIBIT E, pp 1–2.

[redacted]

[redacted] Judge Nathan has now denied that request, EXHIBIT F, [redacted]

[redacted]

Ms. Maxwell has appealed Judge Preska's order unsealing the deposition material, *Giuffre v. Maxwell*, Case No. 20-2413 (2d Cir.), and she is now appealing Judge Nathan's order denying the motion to modify the criminal protective order, *United States v. Maxwell*, Case No. 20-3061 (2d Cir.).

[redacted]

Argument

This Court should consolidate the appeal of Judge Preska's order unsealing the deposition material with the appeal of Judge Nathan's order denying the motion to modify the criminal protective order. Consolidation is necessary for a fair and efficient resolution of these appeals.

First, unless this Court consolidates these appeals, it will find itself in the very same position as the two district courts—one panel of this Court will be privy

to relevant and material information (the panel hearing the criminal case) while the other panel will be in the dark (the panel hearing the civil case). This even though two panels of this Court stand on equal judicial footing.

Second, only through consolidation can this Court resolve these issues in a fair and consistent fashion. This Court has supervisory jurisdiction over the Southern District of New York. The judges of that court, however, have reached inconsistent results to the prejudice of Ms. Maxwell. [redacted]

Third, it's essential that Ms. Maxwell be able to share with Judge Preska

[redacted]

[redacted]

> [redacted]

[redacted]

[redacted]. The government in the criminal case before Judge Nathan refused to agree to a modification of the protective order to allow Ms. Maxwell to inform Judge Preska of the material facts. EXHIBIT G. According to the government, even though all Ms. Maxwell sought was permission to share the requested information with other judicial officers *under seal*, a

modification of the protective order would destroy the secrecy of the ongoing grand jury investigation. Ex. G, p 3–4. [redacted] In *Brown v. Maxwell*, 929 F.3d at 47–48, this Court concluded that the right of access demanded the unsealing of the civil summary judgment material. A fair and consistent application of the decision in *Brown* supports Ms. Maxwell's request to share with Judge Preska the information she learned from Judge Nathan. There's no reason Judge Preska should be deprived access to material presumptively available to the public.

Conclusion

For these reasons, this Court should consolidate *United States v. Maxwell*, Case No. 20-3061, with *Giuffre v. Maxwell*, Case No. 20-2413.

September 10, 2020.

Respectfully submitted,

s/ Adam Mueller
Laura A. Menninger
Ty Gee
Adam Mueller
HADDON, MORGAN AND FOREMAN, P.C.
150 East 10th Avenue
Denver, CO 80203
Tel 303.831.7364
Fax 303.832.2628
lmenninger@hmflaw.com
tgee@hmflaw.com
amueller@hmflaw.com
Counsel for Defendant-Appellant Ghislaine Maxwell

Certificate of Service

I certify that on September 10, 2020, I filed this *Ghislaine Maxwell's Motion to Consolidate Appeal* with the Court via CM/ECF, which will send notification of the filing to all counsel of record. I further certify that I emailed a copy of this *Ghislaine Maxwell's Motion to Consolidate Appeal* to all counsel of record.

s/ Nicole Simmons

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA

- v. -

GHISLAINE MAXWELL,

Defendant.

- - - - - - - - - - - - - - - - - - - x

PROTECTIVE ORDER

20 Cr. 330 (AJN)

ALISON J. NATHAN, United States District Judge:

WHEREAS the Government intends to produce to GHISLAINE MAXWELL, the defendant, certain documents and materials that (i) affect the privacy and confidentiality of individuals, (ii) would impede, if prematurely disclosed, the Government's ongoing investigation; (iii) would risk prejudicial pretrial publicity if publicly disseminated, and (iv) is not authorized to be disclosed to the public or disclosed beyond that which is necessary for the defense of this action, and other materials pursuant to Federal Rule of Criminal Procedure 16 ("Rule 16") and pursuant to any other disclosure obligations (collectively, the "Discovery"), which contain sensitive, confidential, or personal identifying information;

WHEREAS, the Government seeks to protect sensitive, confidential, or personal identifying information contained in the materials it produces consistent with Rule 16 or other disclosure obligations;

WHEREAS the Government has applied for the entry of this Order;

IT HEREBY IS ORDERED:

1. The Discovery disclosed to the defendant ("Defendant") and/or to the defendant's criminal defense attorneys ("Defense Counsel") during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall not be copied or otherwise recorded or transmitted by the Defendant, except to Defense Counsel, or except as necessary for the Defendant to take notes, which are not to be further transmitted to anyone other than Defense Counsel;

c) Shall not be disclosed or distributed in any form by the Defendant or her counsel except as set forth in paragraph 1(d) below;

d) May be disclosed only by Defense Counsel and only to the following persons ("Designated Persons"):

i. investigative, secretarial, clerical, or paralegal personnel employed full-time, part-time, or as

independent contractors by the defendant's counsel ("Defense Staff");

ii. any expert or potential expert, legal advisor, consultant, or any other individual retained or employed by the Defendant and Defense Counsel for the purpose of assisting in the defense of this case ("Defense Experts/Advisors");

iii. such other persons as hereafter may be authorized by Order of the Court ("Other Authorized Persons");

e) May be provided to prospective witnesses and their counsel (collectively, "Potential Defense Witnesses"), to the extent deemed necessary by defense counsel, for trial preparation. To the extent Discovery materials are disclosed to Potential Defense Witnesses, they agree that any such materials will not be further copied, distributed, or otherwise transmitted to individuals other than the recipient Potential Defense Witnesses.

2. The Defendant and Defense Counsel shall provide a copy of this Order to any Designated Persons to whom they disclose Discovery materials. Prior to disclosure of Discovery materials to Designated Persons, any such Designated Person shall agree to be subject to the terms of this Order by signing a copy hereof and stating that they "Agree to be bound by the terms herein," and providing such copy to Defense Counsel. All

such acknowledgments shall be retained by Defense Counsel and shall be subject to *in camera* review by the Court if good cause for review is demonstrated. The Defendant and her counsel need not obtain signatures from any member of the defense team (*i.e.*, attorneys, experts, consultants, paralegals, investigators, support personnel, and secretarial staff involved in the representation of the defendants in this case), all of whom are nonetheless bound by this Protective Order.

3. To the extent that Discovery is disseminated to Defense Experts/Advisors, Other Authorized Persons, or Potential Defense Witnesses, via means other than electronic mail, Defense Counsel shall encrypt and/or password protect the Discovery.

4. The Government, the Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses and their counsel, and Other Authorized Persons are prohibited from posting or causing to be posted any of the Discovery or information contained in the Discovery on the Internet, including any social media website or other publicly available medium.

5. The Government (other than in the discharge of their professional obligations in this matter), the Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses and their counsel, and Other Authorized Persons are strictly prohibited from publicly

disclosing or disseminating the identity of any victims or witnesses referenced in the Discovery. This Order does not prohibit Defense Counsel or Defense Staff from referencing the identities of individuals they believe may be relevant to the defense to Potential Defense Witnesses and their counsel during the course of the investigation and preparation of the defense case at trial. Any Potential Defense Witnesses and their counsel who are provided identifying information by Defense Counsel or Defense Staff are prohibited from further disclosing or disseminating such identifying information. This Order does not prohibit Defense Counsel from publicly referencing individuals who have spoken by name on the public record in this case.

6. The Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses, and Other Authorized Persons are prohibited from filing publicly as an attachment to a filing or excerpted within a filing the identity of any victims or witnesses referenced in the Discovery, who have not spoken by name on the public record in this case, unless authorized by the Government in writing or by Order of the Court. Any such filings must be filed under seal, unless authorized by the Government in writing or by Order of the Court.

7. Copies of Discovery or other materials produced by the Government in this action bearing "confidential" stamps, or designated as "confidential" as described below, and/or electronic Discovery materials designated as "confidential" by the Government, including such materials marked as "confidential" either on the documents or materials themselves, or designated as "confidential" in a folder or document title, are deemed "Confidential Information." The Government shall clearly mark all pages or electronic materials containing Confidential Information, or folder or document titles as necessary, with "confidential" designations.

8. Confidential Information may contain personal identification information of victims, witnesses, or other specific individuals who are not parties to this action, and other confidential information; as well as information that identifies, or could lead to the identification of, witnesses in this matter. The identity of an alleged victim or witness who has identified herself or himself publicly as such on the record in this case shall not be treated as Confidential Information.

9. Defense Counsel may, at any time, notify the Government that Defense Counsel does not concur in the designation of documents or other materials as Confidential Information. If the Government does not agree to de-designate such documents or materials, Defense Counsel may thereafter move

the Court for an Order de-designating such documents or materials. The Government's designation of such documents and materials as Confidential Information will be controlling absent contrary order of the Court.

10. Confidential Information disclosed to the defendant, or Defense Counsel, respectively, during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall be maintained in a safe and secure manner;

c) Shall be reviewed and possessed by the Defendant in hard copy solely in the presence of Defense Counsel;

d) Shall be possessed in electronic format only by Defense Counsel and by appropriate officials of the Bureau of Prisons ("BOP"), who shall provide the defendant with electronic access to the Discovery, including Confidential Information, consistent with the rules and regulations of the BOP, for the Defendant's review;

e) Shall be reviewed by the Defendant solely in the presence of Defense Counsel or when provided access to Discovery materials in electronic format by BOP officials;

f) May be disclosed only by Defense Counsel and only to Designated Persons;

g) May be shown to, either in person, by videoconference, or via a read-only document review platform, but not disseminated to or provided copies of to, Potential Defense Witnesses, to the extent deemed necessary by Defense Counsel, for trial preparation, and after such individual(s) have read and signed this Order acknowledging that such individual(s) are bound by this Order.

11. Copies of Discovery or other materials produced by the Government in this action bearing "highly confidential" stamps or otherwise specifically designated as "highly confidential," and/or electronic Discovery materials designated as "highly confidential" by the Government, including such materials marked as "highly confidential" either on the documents or materials themselves, or designated as "highly confidential" in an index, folder title, or document title, are deemed "Highly Confidential Information." To the extent any Highly Confidential Information is physically produced to the Defendant and Defense Counsel, rather than being made available to the Defendant and Defense Counsel for on-site review, the

Government shall clearly mark all such pages or electronic materials containing Highly Confidential Information with "highly confidential" stamps on the documents or materials themselves.

12. Highly Confidential Information contains nude, partially-nude, or otherwise sexualized images, videos, or other depictions of individuals.

13. Defense Counsel may, at any time, notify the Government that Defense Counsel does not concur in the designation of documents or other materials as Highly Confidential Information. If the Government does not agree to de-designate such documents or materials, Defense Counsel may thereafter move the Court for an Order de-designating such documents or materials. The Government's designation of such documents and materials as Highly Confidential Information will be controlling absent contrary order of the Court.

14. Highly Confidential Information disclosed to Defense Counsel during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall not be disseminated, transmitted, or otherwise copied and provided to Defense Counsel or the Defendant;

c) Shall be reviewed by the Defendant solely in the presence of Defense Counsel;

d) Shall not be possessed outside the presence of Defense Counsel, or maintained, by the Defendant;

e) Shall be made available for inspection by Defense Counsel and the Defendant, under the protection of law enforcement officers or employees; and

f) Shall not be copied or otherwise duplicated by Defense Counsel or the Defendant during such inspections.

15. The Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses, and Other Authorized Persons are prohibited from filing publicly as an attachment to a filing or excerpted within a filing any Confidential Information or Highly Confidential Information referenced in the Discovery, unless authorized by the Government in writing or by Order of the Court. Any such filings must be filed under seal, unless authorized by the Government in writing or by Order of the Court.

16. The provisions of this Order shall not be construed as preventing disclosure of any information, with the exception of victim or witness identifying information, that is

publicly available or obtained by the Defendant or her Defense Counsel from a source other than the Government.

17. Except for Discovery that has been made part of the record of this case, Defense Counsel shall return to the Government or securely destroy or delete all Discovery, including but not limited to Confidential Information, within 30 days of the expiration of the period for direct appeal from any verdict in the above-captioned case; the period of direct appeal from any order dismissing any of the charges in the above-captioned case; the expiration of the period for a petition pursuant to 28 U.S.C. § 2255; any period of time required by the federal or state ethics rules applicable to any attorney of record in this case; or the granting of any motion made on behalf of the Government dismissing any charges in the above-captioned case, whichever date is later.

18. The foregoing provisions shall remain in effect unless and until either (a) the Government and Defense Counsel mutually agree in writing otherwise, or (b) this Order is modified by further order of the Court.

19. The Government and Defense Counsel agree to meet and confer in advance of any hearings or trial to discuss and agree to any modifications necessary for the presentation of evidence at those proceedings. In the absence of agreement,

Defense Counsel may make an appropriate application to the Court for any such modifications.

SO ORDERED:

Dated: New York, New York
July 30, 2020

HONORABLE ALISON J. NATHAN
United States District Judge

EXHIBIT B

FILED UNDER SEAL ONLY IN CASE NO. 20-3061

EXHIBIT C

BSF BOIES SCHILLER FLEXNER

David Boies
Telephone: (914) 749-8200
Email: dboies@bsfllp.com

May 18, 2020

VIA ECF

The Honorable Debra C. Freeman
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: ***Annie Farmer v. Darren K. Indyke, Richard D. Kahn, & Ghislaine Maxwell,*** **19-10475-LGS-DCF**

Dear Judge Freeman:

Pursuant to Individual Rule I.D, Plaintiff Annie Farmer hereby responds to Defendant Ghislaine Maxwell's request for a pre-motion conference in connection with her anticipated motion to stay discovery in this matter. The Court should deny Maxwell's motion for a pre-motion conference and deny her anticipated motion in its entirety because, as explained below, each of Maxwell's reasons for staying discovery is meritless and the motion is simply another attempt to unjustifiably delay this litigation.

First, a pending criminal investigation of Maxwell does not justify a stay of discovery. "[A] stay of a civil case to permit conclusion of a related criminal prosecution has been characterized as an extraordinary remedy." *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 98 (2d Cir. 2012) (internal quotation marks omitted). In this Circuit, courts balance the following six factors when considering whether to stay a civil case pending related criminal proceedings:

> 1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest.

Id. at 99. And according to the very case Maxwell cites in support of staying this action pending a criminal investigation: "The weight of authority in this Circuit indicates that courts will stay a civil proceeding when the criminal investigation has ripened into an indictment, *but will deny a stay of the civil proceeding where no indictment has issued*." *In re Par Pharm., Inc. Sec. Litig.*, 133 F.R.D. 12, 13–14 (S.D.N.Y. 1990) (emphasis added) (internal citations omitted). The Court should deny Maxwell's motion for a stay without prejudice to her ability to renew her application if she is arrested. Until that happens, however, there are no grounds for a stay.

Further, Maxwell has provided no information about the subject matter of the criminal investigation into Epstein's co-conspirators, the status of the investigation, or even disclosed whether she herself is a target of the Southern District's investigation. When Plaintiff's counsel asked Maxwell's counsel for information about the criminal investigation during their meet and confer, Maxwell's counsel refused to provide any details. "A civil defendant urging such a stay [pending a parallel criminal prosecution] bears the burden of establishing its need." *Rex & Roberta Ling Living Tr. v. B Commc'ns Ltd.*, 346 F. Supp. 3d 389, 400 (S.D.N.Y. 2018) (internal quotation marks omitted). Maxwell therefore cannot use the existence of a criminal investigation to dodge her discovery obligations in this matter, particularly while at the same time refusing to provide any details or reasons as to why the investigation is a reason to stay the action under the law of this Circuit.[1]

Second, the potential claims resolution program does not justify a stay of discovery. As this Court knows, the program cannot go forward due to the current criminal activity lien on Jeffrey Epstein's Estate in the U.S. Virgin Islands ("USVI"). *See* Tr. of Feb. 11, 2020 Conf. at 36:15–18 ("[T]he two cases where discovery has been stayed, in light of what's happening in the Virgin Islands, they may end up unstayed."). But even if the lien were lifted and the program could go forward tomorrow, both Epstein's Estate (Maxwell's co-defendant) and this Court have recognized that victims would still not be required to stay discovery in their cases in order to participate in the program. Tr. of Feb 11, 2020 Conf. at 6:10–18 (Estate explaining that staying litigation is not required in order to participate in the program); Tr. of Feb 11, 2020 Conf. at 17:2–3 (Court recognizing that Defendants cannot ask victims to stay their cases in order to participate in the program); Tr. of Nov. 21, 2019 Conf. at 26:10–11 ("The default in this Court is that it does not stay discovery."). Accordingly, this Court has not stayed *any other action* against Jeffrey Epstein's Estate in light of a potential claims administration program unless all the parties agreed to such a stay, and there is no reason to treat this case differently merely because Maxwell is named as a Defendant in addition to the Estate. Further, this Court has recognized that some discovery might, in fact, be necessary to inform the claims resolution program. Tr. of Nov. 21, 2019 Conf. at 27:8–11 ("[I]t may be that you need discovery in the litigation to have in hand certain discovery before you can figure out the right settlement for a particular case.").

Maxwell also contends that if the program moves forward and Plaintiff chooses to participate, Maxwell will be released from liability for sexually assaulting Plaintiff when she was a child. But, again, the contours of the program have not been finalized. Even if the program moves forward and even if Plaintiff chooses to participate, it is not clear that Maxwell would be released for her torts against Plaintiff. In fact, the scope of the release that participants in the program would be required to sign is the very issue, and the sole issue, that the USVI Attorney General and Epstein's Estate are still negotiating. *See* Co-Executors' Corrections to Attorney

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[1] The pending criminal investigation did not inhibit Maxwell from filing her own lawsuit against the Estate for indemnification, even though her criminal conduct would be directly at issue in that case, and the case would require discovery concerning such conduct. *Maxwell v. Estate of Jeffrey E. Epstein, et al.*, ST-20-CV-155 (V.I. Super. Ct.); *Willie v. Amerada Hess Corp.*, 66 V.I. 23, 92 (Super. Ct. 2017) (common law indemnification is only available "where an *innocent party* is held vicariously liable for the actions of the *true tortfeasor*" (emphases in original) (internal quotation marks and citations omitted)).

General's Status Report on Voluntary Compensation Program, *Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-80 (Apr. 14, 2020, V.I. Super. Ct.); Notice of Joinder of Motion for Status Conference Regarding Victim Compensation Fund, *Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-80 (Apr. 29, 2020, V.I. Super. Ct.). The claims resolution program is therefore not a valid basis to stay this action without Plaintiff's consent.[2]

Third, Maxwell contends that her motion to dismiss is "strong and warrants a stay of discovery pending its resolution." Plaintiff has already addressed the merits of Maxwell's motion to dismiss in her response to Maxwell's letter requesting a pre-motion conference on that motion. ECF No. 48. Judge Schofield's words at the pre-motion conference—in which she suggested that Maxwell's counsel *not* file a motion to dismiss—speak for themselves, and demonstrate that Maxwell's motion to dismiss is anything but "strong": "I've reviewed the letter from defendant Maxwell's counsel, and this particular motion doesn't strike me as any more meritorious" than the one previously contemplated by the Estate, which eventually filed an Answer in lieu of a motion to dismiss after a similar pre-motion conference before Judge Schofield. Tr. of Apr. 16, 2020 Conf. at 3:22–24. Further, this Court has explicitly stated that the default in this Court is that dispositive motions do not stay discovery, which is also consistent with Judge Schofield's individual rules. Tr. of Nov. 21, 2019 Conf. at 26:10–12; Judge Schofield's Individual Rule III.C.2. ("Absent extraordinary circumstances, the Court does not stay discovery or any other case management deadlines during the pendency of a motion to dismiss."). Maxwell's anticipated motion to dismiss should not stay discovery in this matter, just as the Estate's motions to dismiss have not stayed discovery in any other matter against it in this District.

The Court should deny Maxwell's motion for a pre-motion conference, and deny her anticipated motion to stay discovery in this matter in its entirety. Nor is full briefing necessary to address the above issues—the anticipated motion to stay borders on frivolous in light of this Court's clear statements about staying cases against Epstein's Estate and Judge Schofield's advice to Maxwell to refrain from filing a motion to dismiss. Maxwell has already failed to comply with her discovery obligations in this matter, in effect granting herself a *de facto* stay, and providing for a full, three-week briefing schedule on her anticipated motion to stay will only give her another incentive to continue to delay. Fact discovery in this matter ends in less than two months, and we respectfully submit that her delay tactics should end now.

Respectfully submitted,

/s/ David Boies
David Boies, Esq.

cc: Counsel of Record (via ECF)

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[2] Maxwell also argues that the fact that Plaintiff's sister (and a few other victims) have voluntarily stayed their cases in light of a potential claims resolution program warrants a ruling that Plaintiff *must* stay her case as well. This makes no sense. Plaintiff and her sister filed separate actions and are separate litigants. Plaintiff's sister's decisions do not bind Plaintiff, nor do any other victims' decisions.

EXHIBIT D

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HADDON
MORGAN
FOREMAN

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August 10, 2020

Honorable Loretta A. Preska
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: August 3, 2020 Order (Doc. 1096)
Giuffre v. Ghislaine Maxwell, No. 15 Civ. 7433 (LAP)

Dear Judge Preska:

I write in response to the Court's Order of August 3, 2020 (Doc. 1069), the Order and Protocol for Unsealing Decided Motions (Doc. 1044) ("Protocol"), and to raise with the Court the legal effect of new information that came to the attention of counsel for Ms. Maxwell on Friday, August 7, 2020.

New information**:** On Friday, August 7, 2020, counsel for Ms. Maxwell learned of critical new information that impacts both this action and *U.S. v. Maxwell*, 20 Cr. 330 (AJN) (the "Criminal Action"). The information implicates Ms. Maxwell's right to due process and fairness in this civil action and affects the Second Circuit's review of the Court's unsealing order of July 23, 2020. Additionally, the information implicates her rights as a criminal defendant guaranteed under the Fourth, Fifth and Sixth Amendments.

Counsel makes the representations about implications of the new information as an officer of this Court. At this time, counsel is not at liberty to disclose the information because it is subject to a protective order in the Criminal Action, which forbids its use "for any civil proceeding or any purpose other than the defense" of the criminal action absent "further order of the Court." Protective Order, 20 Cr. 330 (AJN) at ¶¶ 1(a), 18 (Exhibit A). As required by that Protective Order and Judge Nathan's Individual Practices in Criminal Cases, counsel initiated a conferral with the U.S. Attorney's Office over the weekend concerning a modification of the Protective Order to share the information with this Court and the Second Circuit. Barring agreement, Ms. Maxwell intends to seek modification of the Protective Order in the Criminal Action from Judge Nathan forthwith to permit sharing the information with this Court, *ex parte* and *in camera* if necessary, and with the Second Circuit (likewise under seal if necessary).

Ms. Maxwell requests a temporary stay of the unsealing process for approximately three weeks until the conclusion of (a) the conferral with the U.S. Attorney's Office to a modification of the Protective Order in the Criminal Action and, if necessary, an application and ruling by Judge Nathan on the issue, to permit the use of the information in this Court and before the Second Circuit (under seal in both courts, if necessary), (b) an application to this Court containing the new information in support of a request to stay the unsealing process until the conclusion of the Criminal Action, and (c) a ruling by this Court on the motion for stay.

Streamlining of Unsealing Process: As directed by the Court, counsel for Ms. Maxwell conferred with plaintiff's counsel concerning various proposals to streamline the unsealing process. Subject to Ms. Maxwell's request to temporarily pause the process as described above, defense counsel has agreed to several potential modifications of the Protocol which we hope will ease the burden on the parties and the Court going forward, should the unsealing move ahead. Of note, and as Plaintiff will explain to the Court, the parties have agreed to notify all of the Non-Parties at once so that we can understand which Non-Parties object to the unsealing before deciding how to proceed with future redactions. Although this will give the Court and the Original Parties more information about the scope of objectors, there are limitations to the extent to which it will expedite the process. As counsel has made clear in the past, it will take significant effort by the Original Parties and their staff to put together the excerpts for any Non-Party who requests them because each Non-Party will be entitled to see his or her own information (but not that of other Non-Parties). After receiving a request from a Non-Party, we anticipate it will take up to a week per Non-Party to agree to the excerpts to send to them for review. But on balance we agree that having a sense of the number of participating Non-Parties will aid the Court in conducting future proceedings, we have agreed to Plaintiff's suggestion on that front. The parties can submit a proposed modification of the Protocol and Notice to the Court to reflect this agreement.

We also have agreed, as the Court suggested, to shorten the time period for the Original Parties to object and to respond from 14 to 7 days. This would impact paragraphs 2(d), 2(e) and 2(f) of the Protocol. The parties can also submit a proposed modification of the Protocol to the Court. The parties also agreed to leave the time for Non-Parties to object at 14 days given some practical considerations applicable to them.

Although the parties were able to reach some agreement, we cannot agree to all of Plaintiff's proposals and write separately to explain the basis for our disagreements.

First, we carefully considered the Court's suggestion to reduce the number of pages of briefing to ten pages per side. *Id.* Our initial Objection (DE 1057) was 14 pages long; Plaintiff's Response was 19 pages. The Court concluded that our Objection was, in many respects, not specific enough. We would ask leave to at least have 15 pages to object to the five motions proposed below, with any response limited to the same. We will endeavor to keep it shorter than that, but also allow for more space to provide specifics to the Court.

Second, we have obtained new contact information for Doe 1 from a separate civil suit. We believe that Doe 1 retains a right to notification and participation. We suggest

providing the Notice to Doe 1 at the new address for any future pleadings that implicate his or her deposition, which is currently subject to the Second Circuit's stay.

Third, to prevent against some of the errors that occurred during the last round of unsealings, we request that the Protocol be amended to require the Responding Original Party who proposes unsealing to supply with their Response a proposed unredacted set of the pleadings at issue, for the Court's consideration and for the Objecting Original Party or Non-Party to have the right of reply. Preparing those redactions after the fact allows much ambiguity into the Court's ruling and we believe the Court's ruling should specify which redactions it is accepting or rejecting at the time of ruling.

Finally, we request that the Court allow for the any objecting Non-Party or Original Party be given 7 days following any unseal order to apply for relief in the Second Circuit from the order prior to the documents being released.

Proposed Next Set of Docket Entries for Review:

Given the Second Circuit's stay concerning Ms. Maxwell and Doe 1's deposition transcripts and materials that quote from them, we propose that the Court deviate from the Doe 1 and 2 chronology (given that Doe 1's deposition is sprinkled throughout those motions) and instead take the following five decided motions and their related pleadings. This list represents the first five chronological decided motions that (a) have sealed or redacted materials and (b) do not have attached or quote from documents subject to the stay. They are:

- 75 – Defendant's Motion to Compel Responses to Defendant's First Set of Discovery Responses to Plaintiff
- 139 – Plaintiff's Brief in Support of the Privilege Claimed for In Camera Submission
- 155 – Defendant's Motion to Compel Non-Privileged Documents
- 215 – Sharon Churcher Motion to Quash Subpoena
- 231 – Defendant's Motion to Reopen Deposition of Plaintiff Virginia Giuffre

Counsel for Ms. Maxwell is available for a telephone conference to discuss any of the foregoing, should the Court desire.

Respectfully submitted,

Laura A. Menninger

CC: Counsel of Record *via* ECF

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIRGINIA L. GIUFFRE, Plaintiff, -against- GHISLAINE MAXWELL, Defendant.	No. 15 Civ. 7433 (LAP) ORDER

LORETTA A. PRESKA, Senior United States District Judge:

The Court has reviewed the parties' letters dated August 10 and August 11, 2020. (See dkt. nos. 1099-1101.) The Court writes specifically to address Defendant Ghislaine Maxwell's request for a three-week stay of the unsealing process due to the availability of "critical new information" related both to this action and to the pending criminal case against her, U.S. v. Maxwell, No. 20 Cr. 330 (AJN). (See dkt. no. 1100 at 1-2.)[1]

Ms. Maxwell's request is denied. Given that Ms. Maxwell is not at liberty to disclose this new information because it is subject to the protective order in the criminal action, (id. at 1), the Court has no reasonable basis to impose a stay. And, as Ms. Maxwell knows, her ipse dixit does not provide compelling

[1] Pursuant to the Court's Order dated August 3, 2020 [dkt. no. 1094], the parties have also submitted to the Court for resolution various disputes related to (1) methods for streamlining the unsealing process, and (2) the next set of docket entries to be reviewed for potential unsealing. The Court will address those disputes at a later date.

grounds for relief. Should the protective order in the criminal action be modified to permit disclosure of the relevant information to the Court, Ms. Maxwell may renew her request for a stay of the unsealing process.

SO ORDERED.

Dated: New York, New York
August 12, 2020

Loretta A. Preska

LORETTA A. PRESKA
Senior United States District Judge

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

MEMORANDUM
OPINION AND ORDER

ALISON J. NATHAN, District Judge:

On August 17, 2020, Defendant Ghislaine Maxwell filed a sealed letter motion seeking an Order modifying the protective order in this case.[1] Specifically, she sought a Court order allowing her to file under seal in certain civil cases ("Civil Cases") materials ("Documents") that she received in discovery from the Government in this case. She also sought permission to

[1] This Order will not refer to any redacted or otherwise confidential information, and as a result it will not be sealed. The Court will adopt the redactions to Defendant's August 17, 2020 letter motion that the Government proposed on August 21, 2020, and it will enter that version into the public docket. The Court's decision to adopt the Government's proposed redactions is guided by the three-part test articulated by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). Under this test, the Court must: (i) determine whether the documents in question are "judicial documents;" (ii) assess the weight of the common law presumption of access to the materials; and (iii) balance competing considerations against the presumption of access. *Id.* at 119-20. "Such countervailing factors include but are not limited to 'the danger of impairing law enforcement or judicial efficiency' and 'the privacy interests of those resisting disclosure.'" *Id.* at 120 (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir.1995) ("*Amodeo II*")). The Government's proposed redactions satisfy this test. First, the Court finds that the defendant's letter motion is "relevant to the performance of the judicial function and useful in the judicial process," thereby qualifying as a "judicial document" for purposes of the first element of the *Lugosch* test. *United States v. Amodeo* ("*Amodeo I*"), 44 F.3d 141, 145 (2d Cir. 1995). Second, the Court assumes that the common law presumption of access attaches, thereby satisfying the second element. But in balancing competing considerations against the presumption of access, the Court finds that the arguments the Government has put forth—including, most notably, the threat that public disclosure of the redacted sections would interfere with an ongoing grand jury investigation—favor the Government's proposed narrowly tailored redactions.

In light of this ruling, the parties are hereby ORDERED to meet and confer with respect to proposed redactions to the Defendant's reply letter, dated August 24, 2020 and the Defendant's August 24, 2020 letter addressing her proposed redactions to the Defendant's August 17, 2020 letter motion. The parties are further ORDERED to submit their proposed redactions no later than September 4, 2020; if the parties cannot agree on their proposed redactions, they shall submit a joint letter to the Court explaining the nature of their dispute.

reference, but not file, other discovery material that the Government produced in this case. For the reasons that follow, Defendant's requests are DENIED.

Under Federal Rule of Criminal Procedure 16(d)(1), a Court may enter a protective order only after it finds that good cause exists. Within this framework, the Federal Rules of Criminal Procedure leave it to the discretion of the Court to determine whether modification of an existing protective order is warranted.[2] To make that decision, the Court takes into account all relevant factors, including the parties' reliance on the protective order and whether the moving party has sufficiently substantiated a request to deviate from the *status quo* in the instant matter.

On July 30, 2020, this Court entered a protective order in this case, having determined that good cause existed. Dkt. No. 36. The parties agreed that a protective order was warranted. *See* Dkt. No. 35 at 1 ("The parties have met and conferred, resolving nearly all the issues relating to the proposed protective order."). The Defendant's Proposed Protective Order included a provision that stated that all discovery produced by the Government "[s]hall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action." Dkt. No. 29, Ex. A ¶ 1(a). That language was included in the Court's July 30, 2020 protective order. *See* Dkt. No. 36 ¶¶ 1(a), 10(a), 14(a). Shortly thereafter, the Government began to produce discovery.

Upon receipt of some of the discovery, the Defendant filed the instant request, which seeks modification of the protective order in order to use documents produced in the criminal

[2] In the civil context, there is a "strong presumption against the modification of a protective order." *In re Teligent, Inc.,* 640 F.3d 53, 59 (2d Cir. 2011) (citation omitted). Courts in the Second Circuit have applied the standard for modification of protective orders in the civil context to the criminal context. *See, e.g.*, *United States v. Calderon*, No. 3:15-CR-25 (JCH), 2017 WL 6453344, at *2 (D. Conn. Dec. 1, 2017) (applying the civil standard for the modification of a protective order in a criminal case); *United States v. Kerik*, No. 07-CR-1027 (LAP), 2014 WL 12710346 at *1 (S.D.N.Y. July 23, 2014) (same). *See also United States v. Morales*, 807 F.3d 717, 723 (5th Cir. 2015) (applying the standard for "good cause" in the civil context when evaluating whether to modify a protective order entered in a criminal case); *United States v. Wecht*, 484 F.3d 194, 211 (3rd Cir. 2007) (same).

case in other civil proceedings. She bases her request on the premise that disclosure of the Documents to the relevant judicial officers is allegedly necessary to ensure the fair adjudication of issues being litigated in those civil matters. But after fourteen single-spaced pages of heated rhetoric, the Defendant proffers no more than vague, speculative, and conclusory assertions as to why that is the case. She provides no coherent explanation of what argument she intends to make before those courts that requires the presentation of the materials received in discovery in this criminal matter under the existing terms of the protective order in this case. And she furnishes no substantive explanation regarding the relevance of the Documents to decisions to be made in those matters, let alone any explanation of why modifying the protective order in order to allow such disclosure is necessary to ensure the fair adjudication of those matters. In sum, the arguments the Defendant presents to the Court plainly fail to establish good cause. The Defendant's request is DENIED on this basis.

Indeed, good cause for the requested modification of the protective order is further lacking because, as far as this Court can discern, the *facts* she is interested in conveying to the judicial decisionmakers in the Civil Cases are already publicly available, including in the Government's docketed letter on this issue. *See* Dkt. No. 46. In the opening paragraph of her reply letter dated August 24, 2020, the Defendant states that she is essentially seeking to disclose under seal to certain judicial officers the following factual information:

1. Grand jury subpoenas were issued to an entity ("Recipient") after the Government opened a grand jury investigation into Jeffrey Epstein and his possible co-conspirators;
2. The Recipient concluded that it could not turn over materials responsive to the grand jury subpoena absent a modification of the civil protective orders in the civil cases;

3. In February 2019, the Government, *ex parte* and under seal, sought modification of those civil protective orders so as to permit compliance with the criminal grand jury subpoenas;
4. In April 2019, one court ("Court-1") permitted the modification and, subsequently, another court ("Court-2") did not;
5. That as a result of the modification of the civil protective order by Court-1, the Recipient turned over to the Government certain materials that had been covered by the protective order; and
6. That the Defendant learned of this information (sealed by other courts) as a result of Rule 16 discovery in this criminal matter.

With the exception of identifying the relevant judicial decision makers and specific civil matters, all of the information listed above is available in the public record, including in the letter filed on the public docket by the Government on this issue. *See* Dkt. No. 46. Although this Court remains in the dark as to why this information will be relevant to those courts, so that those courts can make their own determination, to the extent it would otherwise be prohibited by the protective order in this matter, the Court hereby permits the defendant to provide to the relevant courts under seal the above information, including the information identifying the relevant judicial decision makers and civil matters.

In addition, the Government has indicated that "there is no impediment to counsel making sealed applications to Court-1 and Court-2, respectively, to unseal the relevant materials." Dkt. No. 46 at 3 n.5. In her reply, the Defendant asserts that she is amenable to such a solution if the Court agrees with the Government that doing so would not contravene the protective order in this case. To the extent it would otherwise be prohibited by the protective

order in this matter, the Defendant may make unsealing applications to those Courts if she wishes.

SO ORDERED.

Dated: September 2, 2020
New York, New York

ALISON J. NATHAN
United States District Judge

EXHIBIT G

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

August 21, 2020

VIA ECF

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 letter of August 17, 2020 (the "Defense Letter"), requesting that the Court enter an order permitting the defendant to file under seal in certain civil cases (the "Civil Cases") discovery materials produced by the Government in the instant criminal case, and to refer to, but not file, additional other discovery materials produced by the Government in the Civil Cases. Those applications should be denied.[1]

As an initial matter, the Government has already produced, and will continue to produce, substantial volumes of materials in discovery consistent with its obligations. Those include materials the Government obtained via search warrant, grand jury subpoenas, or other investigative methods available only to the Government. Indeed, the Government has already produced more than 165,000 pages of discovery to the defense, including the materials relevant to the Defense Letter. Through her most recent application, the defendant seeks permission to use, in unrelated civil litigation, materials produced pursuant to the protective order in this case and designated "Confidential" thereunder. As detailed herein, the Government's designation is entirely appropriate given that the materials—court orders and applications—have been kept under seal by the issuing judges, and pertain to an ongoing criminal investigation.

[1] The Government has drafted this letter in a manner that avoids revealing the contents of sealed materials and grand jury information. Accordingly, the Government does not seek permission to seal or redact this submission. Because the Defense Letter repeatedly references, and attaches as exhibits, materials that are sealed and that would jeopardize an ongoing grand jury investigation if filed publicly, the Government intends to submit a separate letter, under seal, proposing redactions to the Defense Letter and requesting that the attachments to the Defense Letter be filed under seal.

In particular, the Defense Letter seeks this Court's authorization to use materials relating to applications the Government made seeking the modification of certain protective orders in other judicial proceedings. By way of background, the Government sought such modifications to permit compliance with criminal grand jury subpoenas (the "Subpoenas"). Those Subpoenas were issued to a certain recipient (the "Recipient") after the Government opened a grand jury investigation into Jeffrey Epstein and his possible co-conspirators. For obvious reasons and in keeping with its standard practice, the Government did not notify the defendant or her counsel that it had issued the Subpoenas. In response to receiving the Subpoenas, the Recipient advised the Government that it believed that certain existing protective orders precluded full compliance. Accordingly, in or about February 2019, the Government applied *ex parte* and under seal to each relevant court to request modification of the respective protective orders to permit compliance with the Subpoenas. In or about April 2019, one court ("Court-1") granted the Government's application, and permitted that the Government share its order—and only that order, which itself prohibited further dissemination—to the Recipient.[2] Subsequently, the second court ("Court-2") denied the Government's application. Because the relevant grand jury investigation remains ongoing, both Court-1 and Court-2 have ordered that the filings regarding the Subpoenas remain under seal, except that both have expressly permitted the Government to produce those filings to the defendant as part of its discovery obligations in this criminal case. The Defense Letter now seeks to use those discovery materials in the Civil Cases.

At base, the defendant's application fundamentally misapprehends the nature and process of criminal proceedings, and it further reflects an inappropriate effort to blur the lines between the criminal discovery process and civil litigation. To be clear: the purpose of criminal discovery is to enable the defendant to defend herself in the criminal action, not to provide her with a trove of materials she can mine to her advantage in civil discovery. Her motion is nothing more than an effort to evade the directives of the protective order entered by this Court just three weeks ago. It should be denied for multiple reasons.

First, and as the defendant concedes, the protective order in this case expressly provides that any and all discovery material produced to the defendant by the Government, regardless of designation, "[s]hall be used by the Defendant or her Defense Counsel *solely* for purposes of the defense of this criminal action, and *not for any civil proceeding or any purpose other than the defense of this action*." Protective Order ¶¶ 1(a), 10(a), 14(a) (emphasis added) (Dkt. 36). Indeed, the defendant included that same provision, word-for-word, in her own proposed protective order. This was not a provision about which the defendant and the Government disagreed. *See* Defendant's Proposed Protective Order ¶ 1(a) (Dkt. 29-1). Yet less than a month later, the defendant is asking the Court to sanction her effort to utilize materials produced by the

[2] In the Defense Letter, the defendant argues that the Government "must have given a copy of the sealed order" to the Recipient, which defense counsel suggests is inconsistent with the Government's statement that it rarely provides discovery material to third parties. The defendant's suggestion is patently incorrect. The relevant order was signed in April 2019 and was issued for the purpose of being provided to the Recipient. Indeed the order contained an explicit provision that it could be transmitted to the Recipient. Accordingly, the order was conveyed to the Recipient well over a year before it became "discovery" in this criminal case.

Government in discovery in this criminal case, and to which the protective order unquestionably applies, to litigate her Civil Cases. There is no basis to modify the Protective Order here.

Second, there is good reason why both parties proposed, and the Court ordered, a protective order that prevents the defendant from using materials obtained through the process of criminal discovery in any of the many civil cases in which she is, or could become, a party. To allow the defendant to do so would permit the dissemination of a vast swath of materials, including those that are confidential due to witness privacy interests, personal identifying information of third parties, and relevance in ongoing grand jury investigations. Here, the Government was particularly concerned about the defendant's interests in blurring these lines because, among other reasons, her counsel in the criminal case are also her counsel in the Civil Cases. It would be grossly inappropriate for defense counsel to be permitted to sift through the criminal case discovery and cherry-pick materials they may believe could provide some advantage in their efforts to defend against accusations of abuse by victim plaintiffs, delay court-ordered disclosure of previously-sealed materials, or any other legal effort the defendant may be undertaking at any particular time. And yet that is what the defendant proposes.

Third, the specific documents at issue pertain to *ex parte* applications made as part of an ongoing grand jury investigation. Those documents were filed under seal and presently remain under seal because the relevant judicial officers have ordered that all filings regarding those matters, including the discovery materials referenced in the Defense Letter, remain sealed.[3] As the U.S. Attorney's Office for the Southern District of New York has stated publicly, the investigation into the conduct of the defendant in this case and other possible co-conspirators of Jeffrey Epstein remains active. The full scope and details of that investigation, however, have not been made public.[4] Accordingly, the materials the defendant seeks to file in the Civil Cases were produced under a "Confidential" designation. Any argument that such materials are not "confidential" would not only run contrary to the sealing orders entered by other courts, but also misapprehends the importance of maintaining the confidentiality of criminal investigations.[5] *See*,

[3] The only exceptions to those sealing orders are (1) as noted above, the permission from Court-1 to provide the April 2019 order alone to the Recipient, and, (2) pursuant to separate permissions the Government has obtained in connection with its discovery obligations, that the entirety of the record relating to the Subpoenas may be provided to the defendant as discovery in this case. The defendant's claim that the relevant materials were produced to the defendant in discovery without any application to the sealing courts, Def. Ltr. at 7, is incorrect.

[4] To the extent it would be useful to this Court for the Government to further elaborate on the nature of the ongoing grand jury investigation, the Government is prepared to file a supplemental letter specifically on that subject *ex parte* and under seal should the Court request such an explanation.

[5] Moreover, if counsel for the defendant in her Civil Cases believe that certain documents are improperly sealed, there is no impediment to counsel making sealed applications to Court-1 and Court-2, respectively, to unseal the relevant materials. Presumably they have not done so because

e.g., *United States v. Smith*, 985 F. Supp. 2d 506, 531 (S.D.N.Y. 2013) ("As a general proposition, courts have repeatedly recognized that materials, including even judicial documents which are presumptively accessible, can be kept from the public if their dissemination might 'adversely affect law enforcement interests.'") (*citing United States v. Amodeo*, 71 F.3d 1044, 1050)); *see also United States v. Park*, 619 F. Supp. 2d 89, 94 (S.D.N.Y. 2009) (holding that the need to "maintain the secrecy of the Government's investigation" outweighed the public's right of access to certain sentencing documents).

Fourth, defense counsel cites not a single case to support the argument that a criminal defendant should be permitted to use criminal discovery materials in her civil cases. Nor is the Government aware of any. Though precedent on this issue appears to be somewhat sparse—perhaps because few defendants attempt such a maneuver—*see United States v. Calderon*, 15 Cr. 025, 2017 WL 6453344, at *3 (D. Conn. Dec. 1, 2017) (discussing the relative lack of specific guidance in the context of an application to modify protective orders in criminal cases), *see also United States v. Morales*, 807 F.3d 717, 721 (5th Cir. 2015) ("[m]otions to modify protective orders in criminal cases appear to be infrequent"), decisions that do exist have rejected the kind of blurring of the line between criminal and civil proceedings that the defendant attempts here. *See Calderon*, 2017 WL 6453344, at 5-6 (denying a defendant's application for modification of a criminal protective order so he could use certain discovery materials in a FOIA suit); *United States v. DeNunzio*, --- F. Supp. 3d ---, 2020 WL 1495880, at *2-3 (D. Mass. March 27, 2020) (denying a defendant's motion to modify two protective orders in his criminal case for the purpose of pursuing claims in a civil action, even following the completion of trial).

Absent any authority upon which to rely, the defendant, in urging a contrary conclusion, makes various assertions and accusations, none of which warrant a different outcome. In particular, there is no merit or particular relevance to the defendant's argument that the Government secretly obtained a volume of materials relevant to its criminal case without telling the defendant. That is how grand jury subpoenas and investigations frequently work. Defense counsel's overheated rhetoric notwithstanding, there is simply nothing nefarious about the Government obtaining materials through grand jury subpoena process, let alone anything about the manner in which the Government obtained these materials that warrants the relief requested.

Certainly to the extent the defendant asserts that her adversary in civil litigation has engaged in some sort of improper conduct—assertions the Government by no means intends to suggest agreement with—such arguments even if credited would not be a proper basis to circumvent the plain language of the protective order (or the existing sealing orders) in this case. In any event, of the materials at issue, the only document the defendant's civil adversary has access to is the lone April 2019 order, meaning any purported imbalance between the parties in the Civil Cases at this stage is significantly overstated. And to the extent the defendant may seek to make similar accusations against the Government or challenge the manner in which the Government obtained the materials at issue—a challenge that itself would not justify the relief presently

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they recognize that the materials are appropriately sealed as relating to an ongoing grand jury investigation.

requested—the defendant can make such arguments, and the Government can and will vigorously oppose them, at the appropriate stage in this case.

Finally, to the extent the defendant contends that the relief requested is somehow necessary to her ability to bring issues to the attention of other courts, the Defense Letter completely fails to explain what legal argument she wishes to make in her Civil Cases based on the discovery materials she has identified or what relevance those materials have to the litigation of the Civil Cases. The fact that the Government issued grand jury subpoenas and obtained court authorization for compliance with one of those subpoenas has no conceivable relevance to disputed issues in the Civil Cases. To the extent the defendant argues that the requested relief is necessary to ensure that courts adjudicating the Civil Cases are aware of the existence of the documents at issue, the defendant identifies no specific reason why these materials are relevant to the issues pending in those cases, other than to falsely accuse the Recipient and the Government of some sort of malfeasance.[6]

In sum, the defendant's arguments in favor of her application offer no explanation of the relevant legal theory the materials would support, not to mention a compelling reason for this Court to permit an end-run around the protective order and permit the use of criminal discovery to litigate a civil case. Accordingly, the application in the Defense Letter should be denied.

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

By: /s
Maurene Comey / Alison Moe / Lara Pomerantz
Assistant United States Attorneys
Southern District of New York
Tel: (212) 637-2324

Cc: *All counsel of record*, via ECF

[6] If anything, the Defense Letter suggests that the defendant intends to use criminal discovery materials to attack *the Government* in the Civil Cases, attacks of no discernable relevance in those cases and made in a forum in which the Government is not a party and would have no opportunity to respond.

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: September 15, 2020
Docket #: 20-3061
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 CASE MANAGER CHANGE

The case manager assigned to this matter has been changed.

Inquiries regarding this case may be directed to 212-857-8514.

Haddon, Morgan and Foreman, P.C
Adam Mueller

150 East 10th Avenue
Denver, Colorado 80203
PH 303.831.7364 FX 303.832.2628
www.hmflaw.com
amueller@hmflaw.com

September 15, 2020

Gerard Whidbee
United States Court of Appeals
for the Second Circuit
United States Courthouse
40 Foley Square
New York, NY 10008

Re: *United States v. Maxwell*, No. 20-3061 (2d Cir.)

Dear Mr. Whidbee:

Under Local Rule 31.2(a)(1)(A), Ms. Maxwell selects October 22, 2020, as the due date for her opening brief, which is 42 days from the filing of Form B, which indicates that no transcript will be required or ordered for this appeal.

Sincerely,

Adam Mueller
Counsel for Defendant-Appellant
Ghislaine Maxwell

CC: All counsel of record, *via* ECF

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States v. Maxwell Docket No.: 20-3061

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

Name: Alison Moe

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

Address: One St. Andrew's Plaza

Telephone: (212) 637-2225 Fax:

E-mail: alison.moe@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 S. 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 N/A OR

☐ I applied for admission on .

Signature of Counsel: /s/ Alison Moe

Type or Print Name: Alison Moe

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of September, two thousand twenty,

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United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

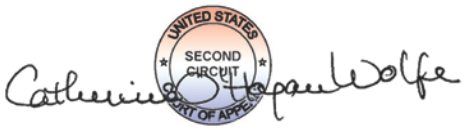
Defendant - Appellant.

ORDER
Docket No: 20-3061

Counsel for APPELLANT Ghislaine Maxwell has filed a scheduling notification pursuant to the Court's Local Rule 31.2, setting October 22, 2020 as the brief filing date.

It is HEREBY ORDERED that Appellant's brief must be filed on or before October 22, 2020. If the brief is not filed by that date, counsel may be subject to an order to show cause why a financial sanction should not be imposed under Local Rule 27.1(h) for the default.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court



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): 20-3061 Caption [use short title] United States v. Maxwell

Motion for: to Dismiss

Set forth below precise, complete statement of relief sought:

Motion to dismiss appeal for lack of jurisdiction

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

☐ Plaintiff ☐ Defendant

☐ Appellant/Petitioner ☑ Appellee/Respondent

MOVING ATTORNEY: Audrey Strauss, Acting U.S. Attorney, Southern District of New York **OPPOSING ATTORNEY:** Adam Mueller

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

By: Maurene Comey, Assistant U.S. Attorney
One Saint Andrew's Plaza, New York, NY 10007
(212) 637-2324; Email: maurene.comey@usdoj.gov

Haddon Morgan & Foreman, P.C.
150 E. 10th Ave., Denver, CO 80203
(303) 831-7364 amueller@hmflaw.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:

Signature of Moving Attorney:

/s/Maurene Comey **Date:** September 16, 2020 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- x

UNITED STATES OF AMERICA	:	AFFIRMATION
Appellee,	:	Dkt. No. 20-3061
- v. -	:	
GHISLAINE MAXWELL,	:	
Defendant-Appellant.	:	

- x

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

MAURENE COMEY, pursuant to Title 28, United States Code, Section 1746, hereby affirms under penalty of perjury:

1. I am an Assistant United States Attorney in the Office of Audrey Strauss, Acting United States Attorney for the Southern District of New York, and I am one of the Assistant United States Attorneys representing the Government on this appeal. Defendant-appellant Ghislaine Maxwell appeals from a September 2, 2020 order of the District Court denying Maxwell's motion to modify the protective order regulating criminal discovery in *United States v. Ghislaine Maxwell*, S1 20 Cr. 330 (AJN) (the "Order"). I respectfully submit this affirmation in support of the Government's motion to dismiss Maxwell's

interlocutory appeal for lack of jurisdiction because the Order is neither a final judgment nor an appealable collateral order, and in opposition to Maxwell's motion to consolidate this appeal with the appeal pending in *Giuffre v. Maxwell*, No. 20-2413.

STATEMENT OF FACTS

2. On June 29, 2020, Indictment 20 Cr. 330 (AJN) was filed under seal in the Southern District of New York, charging Maxwell in six counts. (Dist. Ct. Docket Entry 1).[1] On July 2, 2020, Maxwell was arrested and the original indictment was unsealed. (Dist. Ct. Docket Entry 2). On July 8, 2020, Superseding Indictment S1 20 Cr. 330 (AJN) (the "Indictment") was filed in the Southern District of New York. (Dist. Ct. Docket Entry 17). Count One of the Indictment charges Maxwell with conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charges Maxwell with enticing a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 2422 and 2. Count Three charges Maxwell with conspiracy to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371. Count Four charges Maxwell with transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. § 2423 and 2. Counts Five and Six charge Maxwell with

[1] "Dist. Ct. Docket Entry" refers to the corresponding numbered entry in the District Court's docket for this case; "Mot." refers to Maxwell's motion to consolidate; and "Ex." refers to an exhibit to Maxwell's motion to consolidate.

perjury, in violation of 18 U.S.C. § 1623. The matter remains pending in the pretrial phase before the Honorable Alison J. Nathan, United States District Judge. Maxwell's pretrial motions are due on December 21, 2020, and trial has been scheduled to commence on July 12, 2021.

3. On July 30, 2020, upon the Government's application, Judge Nathan entered a protective order governing the parties' disclosure of information produced in discovery in the criminal case (the "Protective Order"). (Ex. A). The Protective Order expressly provides that any and all discovery material produced to Maxwell by the Government, regardless of designation, "[s]hall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action." (Protective Order ¶¶ 1(a), 10(a), 14(a)). The Protective Order further provides that any discovery material produced to Maxwell by the Government that is marked "confidential" may not be filed publicly or excerpted within any public filing. (*Id.* ¶ 15). Maxwell's criminal defense counsel consented to the foregoing provisions of the Protective Order. (*See* Dist. Ct. Docket Entry 29).

4. On August 17, 2020, Maxwell filed a motion before Judge Nathan seeking an order modifying the Protective Order to allow Maxwell to use confidential criminal discovery materials, which were produced to Maxwell by the

Government, in filings Maxwell intended to submit in separate civil litigation. (District Court Docket Entry 52). In particular, Maxwell's motion sought authorization to use materials relating to applications the Government previously made in 2019 seeking the modification of certain protective orders in other judicial proceedings.

5. On August 21, 2020, the Government filed an opposition to Maxwell's motion to modify the Protective Order. (Dist. Ct. Docket Entry 46). In its opposition, the Government explained the factual background regarding the confidential criminal discovery materials at issue. In particular, the Government explained that those discovery materials related to the Government's requests to modify certain protective orders in civil cases to permit compliance with grand jury subpoenas (the "Subpoenas"). Those Subpoenas were issued to a certain recipient (the "Recipient") in connection with a grand jury investigation into Jeffrey Epstein and his possible co-conspirators. In order to maintain the integrity of the grand jury investigation and in accordance with both Federal Rule of Criminal Procedure 6(e) and its standard practice, the Government did not notify Maxwell or her counsel of the Subpoenas. In response to receiving the Subpoenas, the Recipient advised the Government that it believed that certain existing protective orders precluded full compliance. Accordingly, in or about February 2019, the Government applied *ex parte* and under seal to each relevant court to

request modification of the respective protective orders to permit compliance with the Subpoenas. In or about April 2019, one court ("Court-1") granted the Government's application, and permitted the Government to share Court-1's order—and only that order, which itself prohibited further dissemination—to the Recipient. Subsequently, the second court ("Court-2") denied the Government's application. Because the relevant grand jury investigation remains ongoing, both Court-1 and Court-2 have ordered that the filings regarding the Subpoenas remain under seal, except that both have expressly permitted the Government to produce those filings to Maxwell as part of its discovery obligations in this criminal case.

6. After providing that factual background, the Government argued that Maxwell's motion should be denied for failing to show good cause to modify the Protective Order for several reasons. First, Maxwell had consented to the portions of the Protective Order that prohibit use of criminal discovery materials produced by the Government in any civil litigation. Second, Maxwell had cited no authority to support the argument that a criminal defendant should be permitted to use criminal discovery in civil cases. Third, Maxwell utterly failed to explain how the criminal discovery materials at issue supported any legal argument she wished to make in civil litigation. The Government also noted that to the extent Maxwell sought to challenge the process by which the Government sought compliance with the Subpoenas and obtained certain materials that it intended to

use in prosecuting its criminal case, she would have a full opportunity to do so in her pretrial motions in the criminal case before Judge Nathan.

7. On August 24, 2020, Maxwell filed a reply in further support of her motion. (Dist. Ct. Docket Entry 54).

8. On September 2, 2020, Judge Nathan issued the Order denying Maxwell's motion. (Ex. F). In that Order, Judge Nathan noted that despite "fourteen-single spaced pages of heated rhetoric," Maxwell had offered "no more than vague, speculative, and conclusory assertions" regarding why the criminal discovery materials were necessary to fair adjudication of her civil cases. (*Id.* at 3). Judge Nathan concluded that absent any "coherent explanation" of how the criminal discovery materials related to any argument Maxwell intended to make in civil litigation, Maxwell had "plainly" failed to establish good cause to modify the Protective Order. (*Id.*). Further, Judge Nathan noted that the basic facts Maxwell sought to introduce in civil litigation were already made public through the Government's letter in opposition to her motion. (*Id.* at 3-4). Accordingly, even though Judge Nathan "remain[ed] in the dark as to why this information will be relevant" to the courts adjudicating the civil cases, Judge Nathan expressly permitted Maxwell to inform the tribunals overseeing her civil cases, under seal, of the basic series of events set forth in paragraph 5, *supra*. (*Id.* at 4).

9. On September 4, 2020, Maxwell filed a notice of appeal from

the Order. (Dist. Ct. Docket Entry 55). On September 10, 2020, Maxwell filed the instant motion to consolidate this appeal with the appeal currently pending in *Giuffre v. Maxwell*, No. 20-2413. The Government is not a party to the appeal in *Giuffre v. Maxwell*, which concerns an order issued in a civil case unsealing materials that were previously filed under seal.

ARGUMENT

I. THE APPEAL SHOULD BE DISMISSED FOR LACK OF JURISDICTION

A. Applicable Law

1. The Collateral Order Doctrine

10. Title 28, United States Code, Section 1291 expressly limits the jurisdiction of Courts of Appeals to "final decisions of the district courts." 28 U.S.C. § 1291. "This final judgment rule requires that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits. In a criminal case[,] the rule prohibits appellate review until conviction and imposition of sentence." *Flanagan v. United States*, 465 U.S. 259, 263 (1984) (internal citations and quotation marks omitted); *accord United States v. Aliotta*, 199 F.3d 78, 81 (2d Cir. 1999). As the Supreme Court has "long held," the "policy of Congress embodied in this statute is inimical to piecemeal appellate review of trial court decisions which do not terminate the litigation, and . . . this policy is at its strongest in the field of criminal law." *United States v. Hollywood Motor Car Co.*,

458 U.S. 263, 265 (1982) (per curiam); *see also Flanagan*, 465 U.S. at 270 (noting "overriding policies against interlocutory review in criminal cases" and that "exceptions to the final judgment rule in criminal cases are rare"); *United States v. Culbertson*, 598 F.3d 40, 46 (2d Cir. 2010) (recognizing that "'undue litigiousness and leaden-footed administration of justice,' the common consequences of piecemeal appellate review, are 'particularly damaging to the conduct of criminal cases'" (quoting *Di Bella v. United States*, 369 U.S. 121, 124 (1962))).

11. There is a limited exception to this rule that permits immediate appeal from certain collateral orders. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978) (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949)). To fall within the "small class" of decisions that constitute immediately appealable collateral orders, the decision must "(1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment." *Van Cauwenberghe v. Biard*, 486 U.S. 517, 522 (1988) (internal quotation marks and citations omitted).

12. The Supreme Court has made clear that the collateral order exception should be "interpreted . . . with the utmost strictness in criminal cases." *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 799 (1989) (internal quotation marks omitted) (quoting *Flanagan*, 465 U.S. at 265); *accord United*

States v. Robinson, 473 F.3d 487, 490 (2d Cir. 2007). In over 70 years since *Cohen* was decided, despite "numerous opportunities" to expand the doctrine, *Midland Asphalt*, 489 U.S. at 799, the Supreme Court has identified only four types of pretrial orders in criminal cases as satisfying the collateral-order doctrine: an order denying a bond, *Stack v. Boyle*, 342 U.S. 1 (1951); an order denying a motion to dismiss on Double Jeopardy grounds, *Abney v. United States*, 431 U.S. 651 (1977); an order denying a motion to dismiss under the Speech or Debate Clause, *Helstoski v. Meanor*, 442 U.S. 500 (1979); and an order permitting the forced administration of antipsychotic drugs to render a defendant competent for trial, *Sell v. United States*, 539 U.S. 166 (2003). In contrast, the circumstances in which the Supreme Court has "refused to permit interlocutory appeals" in criminal cases have been "far more numerous." *Midland Asphalt*, 489 U.S. at 799.

13. As to the third *Van Cauwenberghe* criterion, "[a]n order is 'effectively unreviewable' where 'the order at issue involves an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial.'" *United States v. Punn*, 737 F.3d 1, 5 (2d Cir. 2013) (quoting *Lauro Lines s.r.l. v. Chasser*, 490 U.S. 495, 498-99 (1989)). "The justification for immediate appeal must . . . be sufficiently strong to overcome the usual benefits of deferring appeal until litigation concludes." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 107 (2009). A ruling that is burdensome to a party "in ways that are only

imperfectly reparable by appellate reversal of a final district court judgment is not sufficient." *Punn*, 737 F.3d at 5 (internal quotation mark omitted) (quoting *Mohawk Indus.*, 558 U.S. at 107). "Instead, the decisive consideration is whether delaying review until the entry of final judgment 'would imperil a substantial public interest' or 'some particular value of a high order.'" *Mohawk Indus.*, 558 U.S. at 107 (quoting *Will v. Hallock*, 546 U.S. 345, 352-53 (2006)); *see also Kensington Int'l Ltd. v. Republic of Congo*, 461 F.3d 238, 241 (2d Cir. 2006). In a criminal case, the availability of post-judgment relief through reversal or vacatur of conviction, if warranted, will generally be sufficient to protect whatever right a defendant claims was abridged by the district court's pretrial decision. *See, e.g.*, *Punn*, 737 F.3d at 14 ("Punn's claim can be adequately vindicated upon appeal from a final judgment. . . . [I]f Punn's arguments continue to fail before the district court, purportedly ill-gotten evidence or its fruits are admitted at his trial, and conviction results, appellate review will be available at that point[,] . . . [and the Court] may order a new trial without the use of the ill-gotten evidence, or whatever additional remedies are necessary to ensure that Punn's legitimate interests are fully preserved."); *United States v. Hitchcock*, 992 F.2d 236, 239 (9th Cir. 1993) (district court's refusal to seal documents not immediately appealable because "[r]eversal after trial, if it is warranted, will adequately protect . . . interest[s]" asserted by defendants).

14. When applying the collateral-order doctrine, the Supreme Court has "generally denied review of pretrial discovery orders." *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 377 (1981). This Court likewise has consistently ruled that protective orders regulating the use of documents exchanged by the parties during a criminal case are not subject to interlocutory appeal. *See, e.g.*, *United States v. Caparros*, 800 F.2d 23, 24 (2d Cir. 1986) ("We hold that this collateral protective order is not appealable under 28 U.S.C. § 1291 . . . ."); *United States v. Pappas*, 94 F.3d 795, 798 (2d Cir. 1996) ("To the extent that the [protective] order imposed restrictions on the parties' disclosure of materials exchanged in the course of pending litigation, it is not subject to appeal."); *see also H.L. Hayden Co. of N.Y. v. Siemens Medical Sys., Inc.*, 797 F.2d 85, 90 (2d Cir. 1986) ("The district court's denial of modification [of a protective order] does not fall within the 'collateral order' doctrine of *Cohen*."). Because "a litigant does not have 'an unrestrained right to disseminate information that has been obtained through pretrial discovery,'" such protective orders do not amount to an impermissible prior restraint under the First Amendment. *Caparros*, 800 F.2d at 25 (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 31 (1984)). Even where a litigant raises a colorable argument that a protective order violates a litigant's right to release documents outside of criminal litigation, "adjudication of any such right can await final judgment on the underlying charges" because the "purported right

at issue is not related to any right not to stand trial." *Id.* at 26.

2. Appeals Involving Injunctions

15. Title 28, United States Code, Section 1292(a)(1) provides that Courts of Appeals shall have jurisdiction over "[i]nterlocutory orders of the district courts of the United States . . . or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court." Orders regulating discovery in a criminal case, even if couched "using words of restraint," are not injunctions and are therefore not appealable under § 1292(a)(1). *See Pappas*, 94 F.3d at 798 ("Protective orders that only regulate materials exchanged between the parties incident to litigation, like most discovery orders, are neither final orders, appealable under 28 U.S.C. § 1291, nor injunctions, appealable under 28 U.S.C. § 1292(a)(1)." (internal citations omitted)); *Caparros*, 800 F.2d at 26.

B. Discussion

16. There is no dispute that the Order is not a final judgment and thus is not appealable unless it fits within the "small class" of decisions that constitute immediately appealable collateral orders. *Van Cauwenberghe*, 486 U.S. at 522. Because the Order does not fall within the extremely narrow category of collateral orders that are appealable in criminal cases, where the collateral order

rule is "interpreted . . . 'with the utmost strictness,'" the appeal should be dismissed. *Midland Asphalt*, 489 U.S. at 799 (quoting *Flanagan*, 465 U.S. at 265). Among other things, the Order does not meet the third criterion of the standard for identifying immediately appealable collateral orders, which requires that the order being appealed from be "effectively unreviewable on appeal from a final judgment." *Van Cauwenberghe*, 486 U.S. at 522 (internal quotation mark omitted) (quoting *Coopers & Lybrand*, 437 U.S. at 468). Accordingly, this Court does not have jurisdiction to review the Order, and Maxwell's appeal should be dismissed.

17. As an initial matter, when evaluating Maxwell's appeal, this Court cannot engage in an "individualized jurisdictional inquiry" based on the facts of this case, but instead must focus on the "entire category to which a claim belongs." *Mohawk*, 558 U.S. at 107 (internal quotation marks omitted) (quoting *Coopers & Lybrand*, 437 U.S. at 473; *Digital Equipment Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994)). Here, like any other order regulating the use of discovery materials exchanged by the parties during litigation, Judge Nathan's Order declining to modify the Protective Order in this criminal case is not subject to interlocutory appeal. *See Pappas*, 94 F.3d at 798; *Caparros*, 800 F.2d at 24-26.

18. There can be no serious suggestion that this Order falls within the four categories of orders that the Supreme Court has identified as appealable prejudgment in criminal cases, as the Order does not address bail, double jeopardy,

the Speech or Debate Clause, or the forced administration of antipsychotic drugs. *See Midland Asphalt*, 489 U.S. at 799; *Sell*, 539 U.S. at 176-77. The rights implicated here do not meet the high threshold of expanding the collateral order exception in criminal cases beyond those limited categories. Rather, this Order falls within the category of rulings addressing pretrial discovery, which are generally unreviewable on interlocutory appeal. *See Pappas*, 94 F.3d at 798; *Caparros*, 800 F.2d at 24-26. Maxwell has identified no public interest or value that is "sufficiently strong to overcome the usual benefits of deferring appeal until litigation concludes." *Mohawk*, 558 U.S. at 107.

19. Maxwell seems to claim that reversal of Judge Nathan's Order is necessary in order to prevent documents in a civil case from being unsealed. Even assuming a presentation of criminal discovery materials would affect an unsealing decision in a civil case — an argument that Judge Nathan found speculative at best (Ex. F at 3) — a risk of unsealing is not significant enough to merit interlocutory appeal. *See United States v. Martoma*, No. 13-4807, 2014 WL 68119, at *1 (2d Cir. Jan. 8, 2014) (concluding that even though the defendant's "personal interest in the privacy of embarrassing information is an interest that, as a practical matter, cannot be vindicated after disclosure," that interest is insufficient to merit interlocutory appeal); *United States v. Guerrero*, 693 F.3d 990, 998 (9th Cir. 2012) (finding no jurisdiction over defendant's interlocutory

appeal from unsealing of competency evaluation because "any alleged incursions on criminal defendants' rights to privacy and a fair trial do not render the unsealing order effectively unreviewable on appeal"); *Hitchcock*, 992 F.2d at 238-39 (district court's refusal to seal documents not immediately appealable because "[r]eversal after trial, if it is warranted, will adequately protect . . . interest[s]" asserted by defendant); *cf. Mohawk Indus.*, 558 U.S. at 109 (holding that orders to disclose privileged information are not immediately appealable even though they "intrude[] on the confidentiality of attorney-client communications").

20. To the extent Maxwell complains that unsealing filings in a civil case may result in unfair pretrial publicity in her criminal case, such a concern is not an issue that is effectively unreviewable on appeal from a final judgment. Indeed, that very issue has been reviewed by this Court in multiple cases on post-judgment appeal. *See*, *e.g.*, *United States v. Sabhnani*, 599 F.3d 215, 232-34 (2d Cir. 2010) (evaluating on post-judgment appeal whether publicity biased the venire); *United States v. Elfgeeh*, 515 F.3d 100, 128-31 (2d Cir. 2008) (evaluating on post-judgment appeal whether publicity biased trial jurors). Should the Court determine that the jury at Maxwell's trial was biased based on disclosure of material in a civil case, and that such material would not have been unsealed had Judge Nathan permitted modification of the Protective Order, then vacatur of the defendant's conviction – if warranted – will adequately vindicate the defendant's

right to an impartial jury. *See*, *e.g.*, *United States v. Nelson*, 277 F.3d 164, 201-04, 213 (2d Cir. 2002) (vacating conviction where district court improperly refused to excuse potential juror who admitted bias based upon knowledge of defendant's previous acquittal). Thus, the defendant's right to a fair and impartial jury would not "be destroyed if it were not vindicated before trial," *Midland Asphalt*, 489 U.S. at 799 (internal quotation mark omitted) (quoting *United States v. MacDonald*, 435 U.S. 850, 860 (1978)), and, as such, the Order does not meet the third criterion for appealability of a collateral order. *See Punn*, 737 F.3d at 14 (defendant's interests "can be adequately vindicated upon appeal from a final judgment" through "a new trial . . . or whatever additional remedies are necessary").

21. Simply put, the Order denying Maxwell's motion to amend the Protective Order is not reviewable on interlocutory appeal. Maxwell complains that if she cannot use criminal discovery materials in civil litigation then there is a risk that certain filings in the civil cases may be unsealed that otherwise would have remained sealed. Maxwell apparently believes such a result would risk prejudicing her trial rights in the criminal case. If such materials are unsealed in the civil case, and if Maxwell believes that unsealing causes her prejudice at her criminal trial, Maxwell will have a full opportunity to raise that issue in the criminal case. To the extent Maxwell is concerned that unsealing in the civil case might permit the Government to oppose any motion challenging the unsealing

order it obtained during its criminal investigation on the grounds of inevitable discovery, she will have the opportunity to assert such a claim before Judge Nathan. If she is dissatisfied with Judge Nathan's decision on that score, she can raise the issue on appeal after the entry of final judgment.

22. Further, given the substance of Maxwell's motion to consolidate, it is not entirely clear that all of the issues Maxwell seeks to raise in this appeal have been finally resolved. Maxwell's motion to consolidate this matter with the *Giuffre v. Maxwell* appeal appears primarily focused on attacking the legitimacy of the Government's methods of obtaining evidence that it intends to use to prosecute the criminal case through the Subpoenas to the Recipient. (*See* Mot. at 10-12). It thus seems readily apparent that Maxwell intends to file a motion to preclude the use of such evidence at her criminal trial. Yet she seeks to have this Court reach the merits of her arguments on that issue in the context of the *civil* appeal, and before they have been properly litigated before and adjudicated by the District Court in the *criminal* case. As Judge Nathan has not yet addressed (or even had the opportunity to address) that issue in the criminal case, the issues Maxwell raises on this appeal do not appear to be final. Any such arguments are properly heard in the criminal case in the first instance by the district judge, "who play[s] a 'special role' in managing ongoing litigation," and who "can better exercise [his or her] responsibility [to police the prejudment tactics of litigants] if

the appellate courts do not repeatedly intervene to second-guess prejudgment rulings." *Mohawk*, 558 U.S. at 106 (alterations in original) (internal quotation mark omitted) (quoting *Firestone*, 449 at 374; *Richardson-Merrell Inc. v. Koller*, 472 U.S. 424, 436 (1985)).

23. The cases cited in Maxwell's notice of appeal do not alter this analysis. All three are inapposite because they involved appeals by intervenors — not parties — seeking to modify protective orders in civil cases. *See Pichler v. UNITE*, 585 F.3d 741, 745-746 (3d Cir. 2009) (third party intervernor foundation appealing order denying motion to modify protective order in civil litigation to allow third party access to discovery materials); *Minpeco S.A. v. Conticommodity Servs., Inc.*, 832 F.2d 739, 741 (2d Cir. 1987) (Commodity Futures Trading Commission ("CFTC") acting as third party intervenor appealing order denying motion to modify protective order in civil litigation to allow CFTC to obtain discovery exchanged by parties to civil case permissible because "[t]he entire controversy between the CFTC and the defendants in this case was disposed of by the district court's denial of the government's motion to modify the protective order"); *Brown v. Maxwell*, 929 F.3d 41, 46 (2d Cir. 2019) (third party intervenors, including members of the press, appealing order denying motion to modify protective order in civil litigation to allow third parties access to sealed filings, after parties to the litigation settled). Thus, appellate jurisdiction in those cases

was founded on the principle that when intervenors seek access to sealed records, "orders denying access are final *as to the intervenors*." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 117 (2d Cir. 2006) (emphasis added). By contrast, rulings governing the parties' use of discovery materials — such as Judge Nathan's Order here — are not appealable in the context of a criminal prosecution until after judgment is entered. *See Caparros*, 800 F.2d at 24; *Pappas*, 94 F.3d at 798.

24. Judge Nathan's Order does not fall into one of the narrow categories of decisions in a criminal case reviewable on interlocutory appeal. Accordingly, Maxwell's appeal should be dismissed.

II. THE MOTION TO CONSOLIDATE SHOULD BE DENIED

25. Even if Maxwell's appeal is not dismissed — which it should be — her motion to consolidate the appeal in this criminal case with the appeal in the *Giuffre v. Maxwell* civil case should be denied.

26. Despite Maxwell's efforts to characterize this criminal case as somehow intertwined with the *Giuffre* civil case, the issues on appeal are factually and legally distinct. The civil appeal concerns Judge Preska's order unsealing civil litigation materials. The Government is not a party to the civil suit, the Government has never intervened or appeared in the civil suit, the Government has had no role in the litigation that resulted in Judge Preska's order, and the Government has no legal interest in the relief Maxwell seeks in the civil case. For

these reasons alone, the Court should deny Maxwell's motion to consolidate these appeals.

27. Maxwell has filed two separate appeals challenging two different orders by two different district judges. But Maxwell's consolidation motion makes plain that her goal — in both appeals — is to ask this Court to rule on an entirely different question: the lawfulness of the Government's applications to modify certain protective orders in other judicial proceedings. Maxwell's strategy is procedurally improper, for at least two reasons. First, none of the applications or orders with which Maxwell takes issue are before this Court for review — the civil appeal concerns Judge Preska's unsealing order, and this criminal appeal concerns Judge Nathan's Order denying Maxwell's request to modify the Protective Order. Maxwell's motion to consolidate offers no coherent explanation of the connection between the legality of the Government's prior applications and those two appeals. Indeed, as Judge Nathan found, Maxwell has failed to explain, despite a high volume of "heated rhetoric," how those applications could have any possible impact on Judge Preska's decision to unseal filings in the civil litigation. (Ex. F at 3). Second, if Maxwell seeks to challenge the manner in which the Government gathered evidence in a criminal investigation, neither the civil appeal nor this interlocutory criminal appeal is the appropriate forum for her arguments on that score. Maxwell will have the opportunity to raise

any legal objections to the Government's evidence before Judge Nathan, who is presiding over the criminal case. If Maxwell is dissatisfied with Judge Nathan's rulings on those matters, she will have a full opportunity to appeal those rulings after entry of final judgment in her criminal case. The Court should not permit Maxwell to raise these issues at this juncture, before they have been fully litigated before and adjudicated by the presiding district judge.

28. Moreover, Maxwell's motion to consolidate is a transparent attempt to circumvent Judge Nathan's Order without litigating the merits of this appeal. That Order, which is the only ruling on appeal in this case, prohibits Maxwell from using certain criminal discovery materials in civil litigation. If this Court were to consolidate the criminal and civil appeals, the record on appeal in both cases would be merged, the lines between the two cases would be blurred in the manner Maxwell seeks, and the Court would effectively reverse Judge Nathan's Order and grant Maxwell the relief she seeks in this appeal — all without requiring Maxwell to show that Judge Nathan actually abused her discretion by denying Maxwell's motion to modify the Protective Order.[2] Indeed, Maxwell's motion to consolidate does not in any way suggest that there will be anything left

[2] Moreover, if the appeals were consolidated, the sealed filings in this criminal appeal would become part of the record in the civil appeal. The Government is concerned that consolidating these matters would entail disseminating sensitive, sealed documents in a criminal case to civil litigants.

for this Court to adjudicate regarding Judge Nathan's Order — the lone Order on appeal in this matter — if the Court were to grant Maxwell's request to consolidate these appeals. Accordingly, the motion to consolidate should be denied.

CONCLUSION

29. For the foregoing reasons, Maxwell's appeal should be dismissed for lack of jurisdiction. If the appeal is not dismissed, the Government respectfully requests that the Court deny Maxwell's motion for consolidation.

Dated: New York, New York
September 16, 2020

/s/ Maurene Comey
Maurene Comey
Assistant United States Attorney
Telephone: (212) 637-2324

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel hereby certifies that this motion/opposition complies with the type-volume limitation of the Federal Rules of Appellate Procedure. As measured by the word processing system used to prepare this motion/opposition, there are 5,099 words in this motion/opposition.

AUDREY STRAUSS,
Acting United States Attorney for the
Southern District of New York

By: MAURENE COMEY,
Assistant United States Attorney

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- x

UNITED STATES OF AMERICA	:	AFFIRMATION
Appellee,	:	Dkt. No. 20-3061
- v. -	:	
GHISLAINE MAXWELL,	:	
Defendant-Appellant.	:	

- x

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

MAURENE COMEY, pursuant to Title 28, United States Code, Section 1746, hereby affirms under penalty of perjury:

1. I am an Assistant United States Attorney in the Office of Audrey Strauss, Acting United States Attorney for the Southern District of New York, and I am one of the Assistant United States Attorneys representing the Government on this appeal. Defendant-appellant Ghislaine Maxwell appeals from a September 2, 2020 order of the District Court denying Maxwell's motion to modify the protective order regulating criminal discovery in *United States v. Ghislaine Maxwell*, S1 20 Cr. 330 (AJN) (the "Order"). I respectfully submit this affirmation in support of the Government's motion to dismiss Maxwell's

interlocutory appeal for lack of jurisdiction because the Order is neither a final judgment nor an appealable collateral order, and in opposition to Maxwell's motion to consolidate this appeal with the appeal pending in *Giuffre v. Maxwell*, No. 20-2413.

STATEMENT OF FACTS

2. On June 29, 2020, Indictment 20 Cr. 330 (AJN) was filed under seal in the Southern District of New York, charging Maxwell in six counts. (Dist. Ct. Docket Entry 1).[1] On July 2, 2020, Maxwell was arrested and the original indictment was unsealed. (Dist. Ct. Docket Entry 2). On July 8, 2020, Superseding Indictment S1 20 Cr. 330 (AJN) (the "Indictment") was filed in the Southern District of New York. (Dist. Ct. Docket Entry 17). Count One of the Indictment charges Maxwell with conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charges Maxwell with enticing a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 2422 and 2. Count Three charges Maxwell with conspiracy to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371. Count Four charges Maxwell with transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. § 2423 and 2. Counts Five and Six charge Maxwell with

[1] "Dist. Ct. Docket Entry" refers to the corresponding numbered entry in the District Court's docket for this case; "Mot." refers to Maxwell's motion to consolidate; and "Ex." refers to an exhibit to Maxwell's motion to consolidate.

perjury, in violation of 18 U.S.C. § 1623. The matter remains pending in the pretrial phase before the Honorable Alison J. Nathan, United States District Judge. Maxwell's pretrial motions are due on December 21, 2020, and trial has been scheduled to commence on July 12, 2021.

3. On July 30, 2020, upon the Government's application, Judge Nathan entered a protective order governing the parties' disclosure of information produced in discovery in the criminal case (the "Protective Order"). (Ex. A). The Protective Order expressly provides that any and all discovery material produced to Maxwell by the Government, regardless of designation, "[s]hall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action." (Protective Order ¶¶ 1(a), 10(a), 14(a)). The Protective Order further provides that any discovery material produced to Maxwell by the Government that is marked "confidential" may not be filed publicly or excerpted within any public filing. (*Id.* ¶ 15). Maxwell's criminal defense counsel consented to the foregoing provisions of the Protective Order. (*See* Dist. Ct. Docket Entry 29).

4. On August 17, 2020, Maxwell filed a motion before Judge Nathan seeking an order modifying the Protective Order to allow Maxwell to use confidential criminal discovery materials, which were produced to Maxwell by the

Government, in filings Maxwell intended to submit in separate civil litigation. (District Court Docket Entry 52). In particular, Maxwell's motion sought authorization to use materials relating to applications the Government previously made in 2019 seeking the modification of certain protective orders in other judicial proceedings.

5. On August 21, 2020, the Government filed an opposition to Maxwell's motion to modify the Protective Order. (Dist. Ct. Docket Entry 46). In its opposition, the Government explained the factual background regarding the confidential criminal discovery materials at issue. In particular, the Government explained that those discovery materials related to the Government's requests to modify certain protective orders in civil cases to permit compliance with grand jury subpoenas (the "Subpoenas"). Those Subpoenas were issued to a certain recipient (the "Recipient") in connection with a grand jury investigation into Jeffrey Epstein and his possible co-conspirators. In order to maintain the integrity of the grand jury investigation and in accordance with both Federal Rule of Criminal Procedure 6(e) and its standard practice, the Government did not notify Maxwell or her counsel of the Subpoenas. In response to receiving the Subpoenas, the Recipient advised the Government that it believed that certain existing protective orders precluded full compliance. Accordingly, in or about February 2019, the Government applied *ex parte* and under seal to each relevant court to

request modification of the respective protective orders to permit compliance with the Subpoenas. In or about April 2019, one court ("Court-1") granted the Government's application, and permitted the Government to share Court-1's order—and only that order, which itself prohibited further dissemination—to the Recipient. Subsequently, the second court ("Court-2") denied the Government's application. Because the relevant grand jury investigation remains ongoing, both Court-1 and Court-2 have ordered that the filings regarding the Subpoenas remain under seal, except that both have expressly permitted the Government to produce those filings to Maxwell as part of its discovery obligations in this criminal case.

6. After providing that factual background, the Government argued that Maxwell's motion should be denied for failing to show good cause to modify the Protective Order for several reasons. First, Maxwell had consented to the portions of the Protective Order that prohibit use of criminal discovery materials produced by the Government in any civil litigation. Second, Maxwell had cited no authority to support the argument that a criminal defendant should be permitted to use criminal discovery in civil cases. Third, Maxwell utterly failed to explain how the criminal discovery materials at issue supported any legal argument she wished to make in civil litigation. The Government also noted that to the extent Maxwell sought to challenge the process by which the Government sought compliance with the Subpoenas and obtained certain materials that it intended to

use in prosecuting its criminal case, she would have a full opportunity to do so in her pretrial motions in the criminal case before Judge Nathan.

7. On August 24, 2020, Maxwell filed a reply in further support of her motion. (Dist. Ct. Docket Entry 54).

8. On September 2, 2020, Judge Nathan issued the Order denying Maxwell's motion. (Ex. F). In that Order, Judge Nathan noted that despite "fourteen-single spaced pages of heated rhetoric," Maxwell had offered "no more than vague, speculative, and conclusory assertions" regarding why the criminal discovery materials were necessary to fair adjudication of her civil cases. (*Id.* at 3). Judge Nathan concluded that absent any "coherent explanation" of how the criminal discovery materials related to any argument Maxwell intended to make in civil litigation, Maxwell had "plainly" failed to establish good cause to modify the Protective Order. (*Id.*). Further, Judge Nathan noted that the basic facts Maxwell sought to introduce in civil litigation were already made public through the Government's letter in opposition to her motion. (*Id.* at 3-4). Accordingly, even though Judge Nathan "remain[ed] in the dark as to why this information will be relevant" to the courts adjudicating the civil cases, Judge Nathan expressly permitted Maxwell to inform the tribunals overseeing her civil cases, under seal, of the basic series of events set forth in paragraph 5, *supra*. (*Id.* at 4).

9. On September 4, 2020, Maxwell filed a notice of appeal from

the Order. (Dist. Ct. Docket Entry 55). On September 10, 2020, Maxwell filed the instant motion to consolidate this appeal with the appeal currently pending in *Giuffre v. Maxwell*, No. 20-2413. The Government is not a party to the appeal in *Giuffre v. Maxwell*, which concerns an order issued in a civil case unsealing materials that were previously filed under seal.

ARGUMENT

I. THE APPEAL SHOULD BE DISMISSED FOR LACK OF JURISDICTION

A. Applicable Law

1. The Collateral Order Doctrine

10. Title 28, United States Code, Section 1291 expressly limits the jurisdiction of Courts of Appeals to "final decisions of the district courts." 28 U.S.C. § 1291. "This final judgment rule requires that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits. In a criminal case[,] the rule prohibits appellate review until conviction and imposition of sentence." *Flanagan v. United States*, 465 U.S. 259, 263 (1984) (internal citations and quotation marks omitted); *accord United States v. Aliotta*, 199 F.3d 78, 81 (2d Cir. 1999). As the Supreme Court has "long held," the "policy of Congress embodied in this statute is inimical to piecemeal appellate review of trial court decisions which do not terminate the litigation, and . . . this policy is at its strongest in the field of criminal law." *United States v. Hollywood Motor Car Co.*,

458 U.S. 263, 265 (1982) (per curiam); *see also Flanagan*, 465 U.S. at 270 (noting "overriding policies against interlocutory review in criminal cases" and that "exceptions to the final judgment rule in criminal cases are rare"); *United States v. Culbertson*, 598 F.3d 40, 46 (2d Cir. 2010) (recognizing that "'undue litigiousness and leaden-footed administration of justice,' the common consequences of piecemeal appellate review, are 'particularly damaging to the conduct of criminal cases'" (quoting *Di Bella v. United States*, 369 U.S. 121, 124 (1962))).

11. There is a limited exception to this rule that permits immediate appeal from certain collateral orders. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978) (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949)). To fall within the "small class" of decisions that constitute immediately appealable collateral orders, the decision must "(1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment." *Van Cauwenberghe v. Biard*, 486 U.S. 517, 522 (1988) (internal quotation marks and citations omitted).

12. The Supreme Court has made clear that the collateral order exception should be "interpreted . . . with the utmost strictness in criminal cases." *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 799 (1989) (internal quotation marks omitted) (quoting *Flanagan*, 465 U.S. at 265); *accord United*

States v. Robinson, 473 F.3d 487, 490 (2d Cir. 2007). In over 70 years since *Cohen* was decided, despite "numerous opportunities" to expand the doctrine, *Midland Asphalt*, 489 U.S. at 799, the Supreme Court has identified only four types of pretrial orders in criminal cases as satisfying the collateral-order doctrine: an order denying a bond, *Stack v. Boyle*, 342 U.S. 1 (1951); an order denying a motion to dismiss on Double Jeopardy grounds, *Abney v. United States*, 431 U.S. 651 (1977); an order denying a motion to dismiss under the Speech or Debate Clause, *Helstoski v. Meanor*, 442 U.S. 500 (1979); and an order permitting the forced administration of antipsychotic drugs to render a defendant competent for trial, *Sell v. United States*, 539 U.S. 166 (2003). In contrast, the circumstances in which the Supreme Court has "refused to permit interlocutory appeals" in criminal cases have been "far more numerous." *Midland Asphalt*, 489 U.S. at 799.

13. As to the third *Van Cauwenberghe* criterion, "[a]n order is 'effectively unreviewable' where 'the order at issue involves an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial.'" *United States v. Punn*, 737 F.3d 1, 5 (2d Cir. 2013) (quoting *Lauro Lines s.r.l. v. Chasser*, 490 U.S. 495, 498-99 (1989)). "The justification for immediate appeal must . . . be sufficiently strong to overcome the usual benefits of deferring appeal until litigation concludes." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 107 (2009). A ruling that is burdensome to a party "in ways that are only

imperfectly reparable by appellate reversal of a final district court judgment is not sufficient." *Punn*, 737 F.3d at 5 (internal quotation mark omitted) (quoting *Mohawk Indus.*, 558 U.S. at 107). "Instead, the decisive consideration is whether delaying review until the entry of final judgment 'would imperil a substantial public interest' or 'some particular value of a high order.'" *Mohawk Indus.*, 558 U.S. at 107 (quoting *Will v. Hallock*, 546 U.S. 345, 352-53 (2006)); *see also Kensington Int'l Ltd. v. Republic of Congo*, 461 F.3d 238, 241 (2d Cir. 2006). In a criminal case, the availability of post-judgment relief through reversal or vacatur of conviction, if warranted, will generally be sufficient to protect whatever right a defendant claims was abridged by the district court's pretrial decision. *See, e.g.*, *Punn*, 737 F.3d at 14 ("Punn's claim can be adequately vindicated upon appeal from a final judgment. . . . [I]f Punn's arguments continue to fail before the district court, purportedly ill-gotten evidence or its fruits are admitted at his trial, and conviction results, appellate review will be available at that point[,] . . . [and the Court] may order a new trial without the use of the ill-gotten evidence, or whatever additional remedies are necessary to ensure that Punn's legitimate interests are fully preserved."); *United States v. Hitchcock*, 992 F.2d 236, 239 (9th Cir. 1993) (district court's refusal to seal documents not immediately appealable because "[r]eversal after trial, if it is warranted, will adequately protect . . . interest[s]" asserted by defendants).

14. When applying the collateral-order doctrine, the Supreme Court has "generally denied review of pretrial discovery orders." *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 377 (1981). This Court likewise has consistently ruled that protective orders regulating the use of documents exchanged by the parties during a criminal case are not subject to interlocutory appeal. *See, e.g.*, *United States v. Caparros*, 800 F.2d 23, 24 (2d Cir. 1986) ("We hold that this collateral protective order is not appealable under 28 U.S.C. § 1291 . . . ."); *United States v. Pappas*, 94 F.3d 795, 798 (2d Cir. 1996) ("To the extent that the [protective] order imposed restrictions on the parties' disclosure of materials exchanged in the course of pending litigation, it is not subject to appeal."); *see also H.L. Hayden Co. of N.Y. v. Siemens Medical Sys., Inc.*, 797 F.2d 85, 90 (2d Cir. 1986) ("The district court's denial of modification [of a protective order] does not fall within the 'collateral order' doctrine of *Cohen*."). Because "a litigant does not have 'an unrestrained right to disseminate information that has been obtained through pretrial discovery,'" such protective orders do not amount to an impermissible prior restraint under the First Amendment. *Caparros*, 800 F.2d at 25 (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 31 (1984)). Even where a litigant raises a colorable argument that a protective order violates a litigant's right to release documents outside of criminal litigation, "adjudication of any such right can await final judgment on the underlying charges" because the "purported right

at issue is not related to any right not to stand trial." *Id.* at 26.

2. Appeals Involving Injunctions

15. Title 28, United States Code, Section 1292(a)(1) provides that Courts of Appeals shall have jurisdiction over "[i]nterlocutory orders of the district courts of the United States . . . or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court." Orders regulating discovery in a criminal case, even if couched "using words of restraint," are not injunctions and are therefore not appealable under § 1292(a)(1). *See Pappas*, 94 F.3d at 798 ("Protective orders that only regulate materials exchanged between the parties incident to litigation, like most discovery orders, are neither final orders, appealable under 28 U.S.C. § 1291, nor injunctions, appealable under 28 U.S.C. § 1292(a)(1)." (internal citations omitted)); *Caparros*, 800 F.2d at 26.

B. Discussion

16. There is no dispute that the Order is not a final judgment and thus is not appealable unless it fits within the "small class" of decisions that constitute immediately appealable collateral orders. *Van Cauwenberghe*, 486 U.S. at 522. Because the Order does not fall within the extremely narrow category of collateral orders that are appealable in criminal cases, where the collateral order

rule is "interpreted . . . 'with the utmost strictness,'" the appeal should be dismissed. *Midland Asphalt*, 489 U.S. at 799 (quoting *Flanagan*, 465 U.S. at 265). Among other things, the Order does not meet the third criterion of the standard for identifying immediately appealable collateral orders, which requires that the order being appealed from be "effectively unreviewable on appeal from a final judgment." *Van Cauwenberghe*, 486 U.S. at 522 (internal quotation mark omitted) (quoting *Coopers & Lybrand*, 437 U.S. at 468). Accordingly, this Court does not have jurisdiction to review the Order, and Maxwell's appeal should be dismissed.

17. As an initial matter, when evaluating Maxwell's appeal, this Court cannot engage in an "individualized jurisdictional inquiry" based on the facts of this case, but instead must focus on the "entire category to which a claim belongs." *Mohawk*, 558 U.S. at 107 (internal quotation marks omitted) (quoting *Coopers & Lybrand*, 437 U.S. at 473; *Digital Equipment Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994)). Here, like any other order regulating the use of discovery materials exchanged by the parties during litigation, Judge Nathan's Order declining to modify the Protective Order in this criminal case is not subject to interlocutory appeal. *See Pappas*, 94 F.3d at 798; *Caparros*, 800 F.2d at 24-26.

18. There can be no serious suggestion that this Order falls within the four categories of orders that the Supreme Court has identified as appealable prejudgment in criminal cases, as the Order does not address bail, double jeopardy,

the Speech or Debate Clause, or the forced administration of antipsychotic drugs. *See Midland Asphalt*, 489 U.S. at 799; *Sell*, 539 U.S. at 176-77. The rights implicated here do not meet the high threshold of expanding the collateral order exception in criminal cases beyond those limited categories. Rather, this Order falls within the category of rulings addressing pretrial discovery, which are generally unreviewable on interlocutory appeal. *See Pappas*, 94 F.3d at 798; *Caparros*, 800 F.2d at 24-26. Maxwell has identified no public interest or value that is "sufficiently strong to overcome the usual benefits of deferring appeal until litigation concludes." *Mohawk*, 558 U.S. at 107.

19. Maxwell seems to claim that reversal of Judge Nathan's Order is necessary in order to prevent documents in a civil case from being unsealed. Even assuming a presentation of criminal discovery materials would affect an unsealing decision in a civil case — an argument that Judge Nathan found speculative at best (Ex. F at 3) — a risk of unsealing is not significant enough to merit interlocutory appeal. *See United States v. Martoma*, No. 13-4807, 2014 WL 68119, at *1 (2d Cir. Jan. 8, 2014) (concluding that even though the defendant's "personal interest in the privacy of embarrassing information is an interest that, as a practical matter, cannot be vindicated after disclosure," that interest is insufficient to merit interlocutory appeal); *United States v. Guerrero*, 693 F.3d 990, 998 (9th Cir. 2012) (finding no jurisdiction over defendant's interlocutory

appeal from unsealing of competency evaluation because "any alleged incursions on criminal defendants' rights to privacy and a fair trial do not render the unsealing order effectively unreviewable on appeal"); *Hitchcock*, 992 F.2d at 238-39 (district court's refusal to seal documents not immediately appealable because "[r]eversal after trial, if it is warranted, will adequately protect . . . interest[s]" asserted by defendant); *cf. Mohawk Indus.*, 558 U.S. at 109 (holding that orders to disclose privileged information are not immediately appealable even though they "intrude[] on the confidentiality of attorney-client communications").

20. To the extent Maxwell complains that unsealing filings in a civil case may result in unfair pretrial publicity in her criminal case, such a concern is not an issue that is effectively unreviewable on appeal from a final judgment. Indeed, that very issue has been reviewed by this Court in multiple cases on post-judgment appeal. *See*, *e.g.*, *United States v. Sabhnani*, 599 F.3d 215, 232-34 (2d Cir. 2010) (evaluating on post-judgment appeal whether publicity biased the venire); *United States v. Elfgeeh*, 515 F.3d 100, 128-31 (2d Cir. 2008) (evaluating on post-judgment appeal whether publicity biased trial jurors). Should the Court determine that the jury at Maxwell's trial was biased based on disclosure of material in a civil case, and that such material would not have been unsealed had Judge Nathan permitted modification of the Protective Order, then vacatur of the defendant's conviction – if warranted – will adequately vindicate the defendant's

right to an impartial jury. *See*, *e.g.*, *United States v. Nelson*, 277 F.3d 164, 201-04, 213 (2d Cir. 2002) (vacating conviction where district court improperly refused to excuse potential juror who admitted bias based upon knowledge of defendant's previous acquittal). Thus, the defendant's right to a fair and impartial jury would not "be destroyed if it were not vindicated before trial," *Midland Asphalt*, 489 U.S. at 799 (internal quotation mark omitted) (quoting *United States v. MacDonald*, 435 U.S. 850, 860 (1978)), and, as such, the Order does not meet the third criterion for appealability of a collateral order. *See Punn*, 737 F.3d at 14 (defendant's interests "can be adequately vindicated upon appeal from a final judgment" through "a new trial . . . or whatever additional remedies are necessary").

21. Simply put, the Order denying Maxwell's motion to amend the Protective Order is not reviewable on interlocutory appeal. Maxwell complains that if she cannot use criminal discovery materials in civil litigation then there is a risk that certain filings in the civil cases may be unsealed that otherwise would have remained sealed. Maxwell apparently believes such a result would risk prejudicing her trial rights in the criminal case. If such materials are unsealed in the civil case, and if Maxwell believes that unsealing causes her prejudice at her criminal trial, Maxwell will have a full opportunity to raise that issue in the criminal case. To the extent Maxwell is concerned that unsealing in the civil case might permit the Government to oppose any motion challenging the unsealing

order it obtained during its criminal investigation on the grounds of inevitable discovery, she will have the opportunity to assert such a claim before Judge Nathan. If she is dissatisfied with Judge Nathan's decision on that score, she can raise the issue on appeal after the entry of final judgment.

22. Further, given the substance of Maxwell's motion to consolidate, it is not entirely clear that all of the issues Maxwell seeks to raise in this appeal have been finally resolved. Maxwell's motion to consolidate this matter with the *Giuffre v. Maxwell* appeal appears primarily focused on attacking the legitimacy of the Government's methods of obtaining evidence that it intends to use to prosecute the criminal case through the Subpoenas to the Recipient. (*See* Mot. at 10-12). It thus seems readily apparent that Maxwell intends to file a motion to preclude the use of such evidence at her criminal trial. Yet she seeks to have this Court reach the merits of her arguments on that issue in the context of the *civil* appeal, and before they have been properly litigated before and adjudicated by the District Court in the *criminal* case. As Judge Nathan has not yet addressed (or even had the opportunity to address) that issue in the criminal case, the issues Maxwell raises on this appeal do not appear to be final. Any such arguments are properly heard in the criminal case in the first instance by the district judge, "who play[s] a 'special role' in managing ongoing litigation," and who "can better exercise [his or her] responsibility [to police the prejudment tactics of litigants] if

the appellate courts do not repeatedly intervene to second-guess prejudgment rulings." *Mohawk*, 558 U.S. at 106 (alterations in original) (internal quotation mark omitted) (quoting *Firestone*, 449 at 374; *Richardson-Merrell Inc. v. Koller*, 472 U.S. 424, 436 (1985)).

23. The cases cited in Maxwell's notice of appeal do not alter this analysis. All three are inapposite because they involved appeals by intervenors — not parties — seeking to modify protective orders in civil cases. *See Pichler v. UNITE*, 585 F.3d 741, 745-746 (3d Cir. 2009) (third party intervernor foundation appealing order denying motion to modify protective order in civil litigation to allow third party access to discovery materials); *Minpeco S.A. v. Conticommodity Servs., Inc.*, 832 F.2d 739, 741 (2d Cir. 1987) (Commodity Futures Trading Commission ("CFTC") acting as third party intervenor appealing order denying motion to modify protective order in civil litigation to allow CFTC to obtain discovery exchanged by parties to civil case permissible because "[t]he entire controversy between the CFTC and the defendants in this case was disposed of by the district court's denial of the government's motion to modify the protective order"); *Brown v. Maxwell*, 929 F.3d 41, 46 (2d Cir. 2019) (third party intervenors, including members of the press, appealing order denying motion to modify protective order in civil litigation to allow third parties access to sealed filings, after parties to the litigation settled). Thus, appellate jurisdiction in those cases

was founded on the principle that when intervenors seek access to sealed records, "orders denying access are final *as to the intervenors*." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 117 (2d Cir. 2006) (emphasis added). By contrast, rulings governing the parties' use of discovery materials — such as Judge Nathan's Order here — are not appealable in the context of a criminal prosecution until after judgment is entered. *See Caparros*, 800 F.2d at 24; *Pappas*, 94 F.3d at 798.

24. Judge Nathan's Order does not fall into one of the narrow categories of decisions in a criminal case reviewable on interlocutory appeal. Accordingly, Maxwell's appeal should be dismissed.

II. THE MOTION TO CONSOLIDATE SHOULD BE DENIED

25. Even if Maxwell's appeal is not dismissed — which it should be — her motion to consolidate the appeal in this criminal case with the appeal in the *Giuffre v. Maxwell* civil case should be denied.

26. Despite Maxwell's efforts to characterize this criminal case as somehow intertwined with the *Giuffre* civil case, the issues on appeal are factually and legally distinct. The civil appeal concerns Judge Preska's order unsealing civil litigation materials. The Government is not a party to the civil suit, the Government has never intervened or appeared in the civil suit, the Government has had no role in the litigation that resulted in Judge Preska's order, and the Government has no legal interest in the relief Maxwell seeks in the civil case. For

these reasons alone, the Court should deny Maxwell's motion to consolidate these appeals.

27. Maxwell has filed two separate appeals challenging two different orders by two different district judges. But Maxwell's consolidation motion makes plain that her goal — in both appeals — is to ask this Court to rule on an entirely different question: the lawfulness of the Government's applications to modify certain protective orders in other judicial proceedings. Maxwell's strategy is procedurally improper, for at least two reasons. First, none of the applications or orders with which Maxwell takes issue are before this Court for review — the civil appeal concerns Judge Preska's unsealing order, and this criminal appeal concerns Judge Nathan's Order denying Maxwell's request to modify the Protective Order. Maxwell's motion to consolidate offers no coherent explanation of the connection between the legality of the Government's prior applications and those two appeals. Indeed, as Judge Nathan found, Maxwell has failed to explain, despite a high volume of "heated rhetoric," how those applications could have any possible impact on Judge Preska's decision to unseal filings in the civil litigation. (Ex. F at 3). Second, if Maxwell seeks to challenge the manner in which the Government gathered evidence in a criminal investigation, neither the civil appeal nor this interlocutory criminal appeal is the appropriate forum for her arguments on that score. Maxwell will have the opportunity to raise

any legal objections to the Government's evidence before Judge Nathan, who is presiding over the criminal case. If Maxwell is dissatisfied with Judge Nathan's rulings on those matters, she will have a full opportunity to appeal those rulings after entry of final judgment in her criminal case. The Court should not permit Maxwell to raise these issues at this juncture, before they have been fully litigated before and adjudicated by the presiding district judge.

28. Moreover, Maxwell's motion to consolidate is a transparent attempt to circumvent Judge Nathan's Order without litigating the merits of this appeal. That Order, which is the only ruling on appeal in this case, prohibits Maxwell from using certain criminal discovery materials in civil litigation. If this Court were to consolidate the criminal and civil appeals, the record on appeal in both cases would be merged, the lines between the two cases would be blurred in the manner Maxwell seeks, and the Court would effectively reverse Judge Nathan's Order and grant Maxwell the relief she seeks in this appeal — all without requiring Maxwell to show that Judge Nathan actually abused her discretion by denying Maxwell's motion to modify the Protective Order.[2] Indeed, Maxwell's motion to consolidate does not in any way suggest that there will be anything left

[2] Moreover, if the appeals were consolidated, the sealed filings in this criminal appeal would become part of the record in the civil appeal. The Government is concerned that consolidating these matters would entail disseminating sensitive, sealed documents in a criminal case to civil litigants.

for this Court to adjudicate regarding Judge Nathan's Order — the lone Order on appeal in this matter — if the Court were to grant Maxwell's request to consolidate these appeals. Accordingly, the motion to consolidate should be denied.

CONCLUSION

29. For the foregoing reasons, Maxwell's appeal should be dismissed for lack of jurisdiction. If the appeal is not dismissed, the Government respectfully requests that the Court deny Maxwell's motion for consolidation.

Dated: New York, New York
September 16, 2020

/s/ Maurene Comey
Maurene Comey
Assistant United States Attorney
Telephone: (212) 637-2324

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel hereby certifies that this motion/opposition complies with the type-volume limitation of the Federal Rules of Appellate Procedure. As measured by the word processing system used to prepare this motion/opposition, there are 5,099 words in this motion/opposition.

AUDREY STRAUSS,
Acting United States Attorney for the
Southern District of New York

By: MAURENE COMEY,
Assistant United States Attorney

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of September, two thousand twenty,

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Virginia L. Giuffre,

Plaintiff - Appellee,

v.

Ghislaine Maxwell,

Defendant - Appellant,

Sharon Churcher, Jeffrey Epstein,

Respondents,

Julie Brown, Miami Herald Media Company, Alan M. Dershowitz, Michael Cernovich, DBA Cernovich Media,

Intervenors.

ORDER
Docket No. 20-2413

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

Docket No. 20-3061

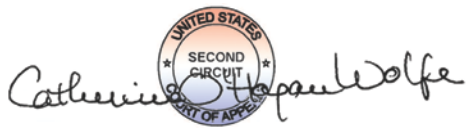
On September 10, 2020, Appellant filed a motion for consolidation of the appeal docketed under 20-2413 with the appeal docketed under 20-3061. It is hereby ORDERED that

oral argument on this motion in 20-3061 will be heard on Tuesday, October 13, 2020 at 2:00 pm after argument in 20-2413.

It is further ORDERED that the parties' briefs for Docket No. 20-3061 shall be filed in accordance with the following schedule:

Appellant's opening brief is due September 24, 2020;
Appellee's response brief is due October 2, 2020;
Appellant's reply brief, if any, is due October 8, 2020.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court



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: September 23, 2020
Docket #: 20-3061
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

On September 23, 2020 the LETTER, on behalf of the APPELLANT, 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)*
_____ 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)*
_____ Improper proof of service *(FRAP 25)*
    _____ Missing proof of service
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_____ Failure to file appendix on CD-ROM *(Local Rule 25.1, Local Rules 25.2)*
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_____ Defective cover *(FRAP 32)*
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    _____ Wrong color cover *(FRAP 32)*
    _____ Docket number font too small *(Local Rule 32.1)*
_____ Incorrect pagination, click here for instructions on how to paginate PDFs *(Local Rule 32.1)*
_____ Incorrect font *(FRAP 32)*
_____ Oversized filing *(FRAP 27 (motion), FRAP 32 (brief))*
_____ Missing Amicus Curiae filing or motion *(Local Rule 29.1)*
_____ Untimely filing

__X____ Incorrect Filing Event
__X____ Other: Correct docket entry is SUPPLEMENTARY PAPERS TO MOTION

Please cure the defect(s) and resubmit the document, with the required copies if necessary, no later than September 25, 2020. The resubmitted documents, if compliant with FRAP and the Local Rules, will be deemed timely filed.

Failure to cure the defect(s) 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 212-857-8514.

Nos. 20-2413 & 20-3061

United States Court of Appeals for the Second Circuit

VIRGINIA L. GIUFFRE, *Plaintiff-Appellee*, v. GHISLAINE MAXWELL, *Defendant- Appellant*.	On Appeal from the U.S. District Court for the Southern District of New York No. 15-CV-7433 (LAP) The Honorable Loretta A. Preska, U.S. District Judge
UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. GHISLAINE MAXWELL, *Defendant-Appellant*.	On Appeal from the U.S. District Court for the Southern District of New York No. 20-CR-330 (AJN) The Honorable Alison J. Nathan, U.S. District Judge

Ghislaine Maxwell's Response to Opposition to Motion to Consolidate

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

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

Moreover, [redacted] It's fanciful to say the two cases aren't related.

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

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

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

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

As Ms. Maxwell said in her opening brief:

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

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

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

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

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

This Court should grant the motion to consolidate.

September 23, 2020.

Respectfully submitted,

s/ Adam Mueller

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Certificate of Compliance with Rule 32(g)

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

s/ Adam Mueller

Certificate of Service

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

s/ Nicole Simmons

20-3061

United States Court of Appeals
for the Second Circuit

UNITED STATES OF AMERICA

Plaintiff-Appellee,

—against—

GHISLAINE MAXWELL,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, 20-CR-330 (AJN)

Ghislaine Maxwell's Opening Brief

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Statement of the Case and the Facts

The indictment.

In a superseding indictment, the government alleges that Ms. Maxwell: conspired with Jeffrey Epstein to entice minors to travel to engage in illegal sex acts (Count 1); enticed a minor to travel to engage in illegal sex acts (Count 2); conspired with Epstein to transport minors with the intent to engage in criminal sexual activity (Count 3); transported a minor with the intent to engage in criminal sexual activity (Count 4); committed perjury in the April 2016 deposition in *Giuffre v. Maxwell*, No. 15-cv-7433 (S.D.N.Y) (Count 5); and committed perjury in the July 2016 deposition in *Giuffre v. Maxwell* (Count 6). App. 13–30.

The civil case.

Giuffre v. Maxwell is a long-dismissed defamation case in which Virginia L. Giuffre alleged that Ms. Maxwell defamed her. The alleged defamation centered on a statement from Ms. Maxwell's attorney-hired press agent generally denying as "untrue" and "obvious lies" plaintiff's numerous allegations, over the span of four years, that Ms. Maxwell participated in a scheme causing her to be "sexually abused and trafficked" by Epstein. The case settled after discovery and before trial, and the district court dismissed the case with prejudice in May 2017.

Ms. Maxwell sat for two depositions during discovery in *Giuffre v. Maxwell*, the transcripts of which were both designated "confidential" under a court-ordered protective order. App. 154–59. The transcripts of both depositions were filed with the court during the course of the case and sealed by the court under the terms of the protective order.

In turn, the civil protective order prohibited attorneys and parties from sharing confidential information, including Ms. Maxwell's depositions, with any third party, except as necessary for the preparation and trial of the case. App. 155–56.

As originally proposed by Ms. Giuffre's attorneys, the protective order would have allowed plaintiff to share confidential information with law enforcement. App. 125. Ms. Maxwell objected to this language, which was removed and never made part of a court order. App. 125 & n.4.

The subpoena.

So if the civil protective order did not allow plaintiff to share confidential information with law enforcement, and Ms. Maxwell did not provide the government with her deposition transcripts (which she didn't), how did the government obtain them and bring a criminal indictment alleging that Ms. Maxwell committed perjury?

[redacted]

[redacted] during the pendency of the appeal in *Brown v. Maxwell*, No. 18-2868 (2d Cir.) before this Court, which challenged an earlier order in the civil case declining Alan Dershowitz's and Michael Cernovich's motions to modify the civil protective order and denying the Miami Herald's request to unseal the district court docket. *Brown v. Maxwell*, 929 F.3d 41, 44 (2d Cir. 2019).

[redacted] Judge Preska, who, after the passing of Judge Sweet, was assigned to preside over the remand from this Court in *Brown* to decide what material protected by the civil protective order should remain sealed.[1]

[redacted] repeatedly downplayed and dismissed arguments made by Ms. Maxwell that the material should remain sealed because of the potential for a criminal investigation. Doc. 17, pp 4–5; Doc. 20, p 2.[2] For example, when Ms. Maxwell moved to stay discovery in *Farmer v. Indyke*, No. 19-cv-10475 (LGS-DCF) (S.D.N.Y.), due to the pending criminal investigation, Ms. Giuffre's attorneys (who also represented plaintiff Annie Farmer) opposed the motion on the ground that Ms. Maxwell could not show the existence or scope of

[1] [redacted]

[2] Citations to "Doc." are to documents filed in this appeal and publicly available on ECF.

Citation's to "ECF Dkt." are to the ECF documents filed in related cases as described in the individual citations.

any such criminal investigation [redacted]

[redacted]:

> Maxwell has provided no information about the subject matter of the criminal investigation into Epstein's co-conspirators, the status of the investigation, or even disclosed whether she herself is a target of the Southern District's investigation. When Plaintiff's counsel asked Maxwell's counsel for information about the criminal investigation during their meet and confer, Maxwell's counsel refused to provide any details.

Doc. 20, p 2.

[redacted]

[redacted]

[redacted]

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[redacted] Ms. Maxwell asked Judge Preska to briefly stay the

unsealing process. Doc. 17, p 6. But because of the criminal protective order issued by Judge Nathan, all Ms. Maxwell could reveal to Judge Preska was that she was aware of critical new information. Doc. 17, p 6. She couldn't tell Judge Preska what that information was. Doc. 17, p 6.

Judge Preska declined to stay the unsealing process but said she would reevaluate if Judge Nathan modified the criminal protective order and allowed Ms. Maxwell to share with Judge Preska, under seal, all she had learned as described above. Doc. 17, p 6.

The order declining to modify the criminal protective order.

At Judge Preska's suggestion, Ms. Maxwell filed a motion with Judge Nathan seeking modification of the criminal protective order. App. 124–31. All the motion asked was for permission to share with Judge Preska and with this Court, under seal, what Ms. Maxwell had learned [redacted]

[redacted]

Judge Nathan denied the motion to modify, though she invited Ms. Maxwell to seek relief from two other judicial officers, [redacted]. App. 99–103.

The appeals.

Pending before this Court in *Giuffre v. Maxwell*, No. 20-2413 (2d Cir.), is Ms. Maxwell's appeal of Judge Preska's order unsealing the deposition material.

This appeal is from Judge Nathan's order denying Ms. Maxwell's motion to modify the criminal protective order to share with Judge Preska and this Court in *Giuffre v. Maxwell*, under seal, [redacted] App. 121.

Ms. Maxwell has moved to consolidate both appeals. That motion remains pending.

Jurisdictional Statement

This Court has jurisdiction under the collateral order doctrine to review a district court decision declining to modify the protective order. *Pichler v. UNITE*, 585 F.3d 741, 746 n.6 (3d Cir. 2009) ("We have jurisdiction under the collateral order doctrine to review the denial of the motion to modify the Protective Order and the denial of the motion to reconsider."); *Minpeco S.A. v. Conticommodity Servs., Inc.*, 832 F.2d 739, 742 (2d Cir. 1987) (denial of motion to modify protective order is immediately appealable under the collateral order doctrine) (citing *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 545–47 (1949)); *see also Brown v. Maxwell*, 929 F.3d 41, 44 (2d Cir. 2019) (appeal by intervenors challenging denial of motions to modify protective order and unseal).

Under the collateral order doctrine, an interlocutory order is immediately appealable if it (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment. *Will v. Hallock*, 546 U.S. 345, 349 (2006) (citing *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993)).

The district court's order declining to modify the protective order meets all three requirements: the court conclusively decided not to modify the protective

order, App. 99–103; the propriety of modifying the protective order is completely separate from the merits of the government's criminal allegations against Ms. Maxwell; and appellate review of the order will be impossible following final judgment because a post-judgment appeal will be moot since, by that time, Judge Preska's decision unsealing the deposition material in *Giuffre v. Maxwell*, Nos. 20-2413 (2d Cir.)/15-cv-7433 (S.D.N.Y.) will have gone into effect.

That is the very point of this appeal, after all: to share with Judge Preska what Ms. Maxwell learned from [redacted] What's more, all of this happened while the

civil case was on appeal and pending before this Court.[3] *Brown v. Maxwell*, No. 18-2868. All Ms. Maxwell asks is for permission to share, under seal, the relevant facts with another Article III judge.

The government argues there is no jurisdiction for this Court to consider this appeal. Doc. 37. Quoting *Midland Asphalt Corp. v. United States*, the government says the collateral order doctrine must be interpreted "with the utmost strictness in criminal cases." 489 U.S. 794, 799 (1989) (quoting *Flanagan v. United States*, 465 U.S. 259, 265 (1984)). Doc. 37 at 8. According to the government, in criminal cases the doctrine applies only to orders denying a bond, orders denying a motion to dismiss on double jeopardy ground, orders denying a motion to dismiss under the Speech and Debate Clause, and orders permitting the forced administration of antipsychotic drugs to render a defendant competent for trial. Doc. 37 at 9. The government is wrong.

To be sure, this appeal does not concern one of the four types of orders identified by the government. But that doesn't mean the appeal isn't proper under

[3] The Miami Herald filed its notice of appeal in *Brown v. Maxwell*, No. 18-2868 (2d Cir.), on September 26, 2018, and this Court issued its decision on July 3, 2019, *Brown v. Maxwell*, 929 F.3d 41 (2d Cir.2019).

[redacted].

the collateral order doctrine, particularly when there is no serious argument that it satisfies each of the doctrine's three requirements: Judge Nathan's order (1) conclusively determined the disputed question, (2) it resolved an important issue completely separate from the merits of the action, and (3) it is effectively unreviewable on appeal from a final judgment. *See Will*, 546 U.S. at 349.

In *Flanagan v. United States*, the Supreme Court ruled that an order disqualifying criminal counsel pretrial was not immediately appealable under the collateral order doctrine. 465 U.S. 259, 266 (1984). The Court explained that unlike an order denying a motion to reduce bail, which "becomes moot if review awaits conviction and sentence," an order disqualifying counsel is fully remediable posttrial. *Id.* Moreover, a motion to disqualify counsel is "not independent of the issues to be tried" because its "validity cannot be adequately reviewed until trial is complete." *Id.* at 268. Finally, unlike an appeal of a bail decision, "an appeal of a disqualification order interrupts the trial," and any delay in a criminal case "exacts a presumptively prohibitive price." *Id.* at 269.

In contrast to the disqualification order at issue in *Flanagan*, the appeal of Judge Nathan's order is like the appeal of an order denying a motion to reduce bail. First, this appeal will "become[] moot if review awaits conviction and sentence." *See id.* at 266. Unless Ms. Maxwell is permitted to share with Judge Preska what

she learned from Judge Nathan, Judge Preska's order unsealing the deposition material will go into effect without Judge Preska's having the opportunity to reconsider her decision in light of the new information. And once the deposition material is unsealed, the cat is irretrievably out of the bag. That is precisely why this Court stayed Judge Preska's order pending appeal. *Giuffre v. Maxwell*, No. 20-2413 (2d Cir.), Doc. 30.

Second, the appeal of Judge Nathan's order is entirely "independent of the issues to be tried" in the criminal case and its "validity can[] be adequately reviewed" now. *See Flanagan*, 465 U.S. at 268. There is nothing about Ms. Maxwell's request to share information with Judge Preska that must wait until the criminal trial is over. To the contrary, waiting until the criminal trial is over will moot the issue.

Third, this appeal does not and will not delay the criminal case, which is proceeding apace notwithstanding the proceedings before this Court. *See id.* at 264 (explaining that interlocutory appeals in criminal cases are generally disfavored because of the "societal interest in providing a speedy trial").[4]

[4] The fact that the criminal case is proceeding on course despite this appeal confirms that this appeal involves an issue completely separate from the merits of the criminal action.

The government's contentions to the contrary rely on two easily distinguishable cases and misunderstand Ms. Maxwell's arguments. Start with the two cases on which the government relies. Doc. 37, p 11 (citing *United States v. Caparros*, 800 F.2d 23, 24 (2d Cir. 1986); *United States v. Pappas*, 94 F.3d 795, 798 (2d Cir. 1996)). According to the government, *Caparros* and *Pappas* hold that "protective orders regulating the use of documents exchanged by the parties during a criminal case are not subject to interlocutory appeal." Doc. 37, p 11. That is not correct.

In *Caparros*, this Court dismissed an appeal of a protective order issued in a criminal case preventing the defendant from making public certain documents allegedly concerning public safety. 800 F.2d at 23–24. According to the defendant, the prohibition on public disclosure was an unconstitutional prior restraint of speech. *Id.* at 24. This Court dismissed the appeal because it did not satisfy the three conditions precedent to interlocutory review, in particular the requirement that the issue must be effectively unreviewable on appeal from a final judgment. *Id.* at 24–26. Said the Court:

> [The issue] will not become moot on conviction and sentence or on acquittal because the order will have continuing prohibitive effect thereafter and the purported right to publish the documents, to the extent it now exists, will also continue. This is not a situation where an order, to be reviewed at all, must be reviewed before the proceedings

> terminate. Nor is there any allegation of grave harm to appellant if the order is not immediately reviewed.

Id. at 26 (internal citations omitted).

This case is not like *Caparros*. For one thing, Ms. Maxwell does not seek to make anything public. To the contrary, she seeks to provide documents to *judicial officers—under seal*—to ensure that all the Article III decisionmakers are on the same page regarding the relevant facts and that Judge Preska does not continue to remain in the dark. For another thing, this appeal *will* become moot if review awaits a final judgment in the criminal case, even if the protective order continues to have prohibitive effect following the criminal trial. That's because what Ms. Maxwell seeks is permission to share information with Judge Preska *now*, information that should be part of Judge Preska's decisionmaking in the unsealing process and any decision whether to stay that process. And unless Ms. Maxwell can share the information now, the request will become moot because there is no way to "re-seal" a document Judge Preska prematurely unseals without the benefit of knowing all the facts.

Pappas also doesn't help the government. In *Pappas*, this Court dismissed in part an appeal challenging a protective order prohibiting the defendant from disclosing classified information he obtained from the government as part of discovery. 94 F.3d at 797. At the same time, the Court *accepted* jurisdiction over the

portion of the appeal that challenged the protective order's bar on disclosure of information the defendant acquired from the government prior to the litigation. *Id.* at 798. This Court distinguished the differing results based on the breadth of the protective order's ban. *Id.* As this Court said, "to the extent that the order prohibits Pappas from disclosure of information he acquired from the Government prior to the litigation, the order is not a typical protective order regulating discovery documents and should be appealable because of the breadth of its restraint." *Id.* (citing *United States v. Salameh*, 992 F.2d 445, 446–47 (2d Cir. 1993)).

Beyond standing for the proposition that interlocutory appeals are the exception and not the rule (which Ms. Maxwell doesn't dispute), *Pappas* has nothing to add to the analysis here. Even strictly construing the three requirements for collateral order jurisdiction, *see Will*, 546 U.S. at 349, the order here meets the test.

The balance of the government's argument against jurisdiction misunderstands Ms. Maxwell's position. For example, according to the government, "it is not entirely clear that all of the issues Maxwell seeks to raise in this appeal have been finally resolved." Doc. 37, p 17. Ms. Maxwell's argument, says the government, is "primarily focused on attacking the legitimacy of the

Government's methods of obtaining evidence that it intends to use to prosecute the criminal case through the Subpoenas to" [redacted] Doc. 37, p 17. Based on this understanding, the government claims that Ms. Maxwell "seeks to have this Court reach the merits of her arguments on that issue in the context of the *civil* appeal, and before they have been properly litigated before and adjudicated by the District Court in the *criminal* case." Doc. 37, p 17 (emphasis in original). That is not so.

In the civil appeal, Ms. Maxwell is not asking this Court to rule on the propriety of the government's conduct in circumventing *Martindell* and obtaining her depositions in a secret *ex parte* proceeding without providing Ms. Maxwell notice and an opportunity to be heard.

Rather, Ms. Maxwell's argument in the civil appeal is that, unless this Court reverses Judge Preska's order unsealing the deposition material, Ms. Maxwell may never be able to challenge before Judge Nathan the government's conduct in obtaining her depositions. As Ms. Maxwell said in her opening brief in the appeal of Judge Preska's unsealing order:

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

> preserve the status quo and protect Ms. Maxwell's right to litigate *Martindell* and the Fifth Amendment in the criminal proceeding.

Giuffre v. Maxwell, No. 20-2413, ECF Dkt. 69, p 33. Only by mischaracterizing Ms. Maxwell's argument can the government contend that she "seeks to have this Court reach the merits of her arguments on [the *Martindell*] issue in the context of the *civil* appeal, and before they have been properly litigated before and adjudicated by the District Court in the *criminal* case." *See* Doc. 37, p 17. Ms. Maxwell's point is that, unless the unsealing order is reversed, Ms. Maxwell likely won't be able to "properly litigate" the *Martindell* issue at all.

Nor is *this* appeal the proper forum for deciding whether the government improperly circumvented *Martindell*. All Ms. Maxwell seeks here is an order allowing her to share with Judge Preska information that is essential to her decision to unseal the deposition material and to rule on a motion to stay, information Judge Preska did not know at the time and information the government insists should be kept from her. And that issue—whether it is proper for one Article III judge, at the request of the government, to keep secret from a co-equal judge information relevant and material to the second judge's role in deciding a matter before her—is properly reviewed on an interlocutory basis because it is "an important issue completely separate from the merits of the action." *Will*, 546 U.S. at 349.

Assuming Ms. Maxwell cannot appeal Judge Nathan's order under the collateral order doctrine, this Court should exercise mandamus jurisdiction and issue a writ of mandamus directing the district court to modify the protective order as requested by Ms. Maxwell. *E.g.*, *Wilk v. Am. Med. Ass'n*, 635 F.2d 1295, 1298 (7th Cir. 1980) (declining to decide whether the collateral order applied and instead issuing a writ of mandamus to vacate a district court decision declining to modify protective order), *superseded by rule on other grounds as recognized in Bond v. Utreras*, 585 F.3d 1061, 1068 n.4 (7th Cir. 2009); *see Pappas*, 94 F.3d at 798 (recognizing that protective orders in criminal cases "[i]n rare instances . . . might raise issues available for review via a petition for writ of mandamus").

A writ of mandamus issued under the All Writs Act "confine[s] the court against which mandamus is sought to a lawful exercise of its prescribed jurisdiction." *In re City of N.Y.*, 607 F.3d 923, 932 (2d Cir. 2010) (internal quotations omitted). A writ is properly issued when "exceptional circumstances amount[] to a . . . clear abuse of discretion." *Id.* (internal quotations omitted).

Three conditions must exist for this Court to issue a writ of mandamus: (1) the petitioner must demonstrate the right to issuance of the writ is clear and indisputable; (2) she must have no other adequate means to attain the relief desired; and (3) the issuing court must be satisfied the writ is appropriate. *In re*

Roman Catholic Diocese of Albany, N.Y., 745 F.3d 30, 35 (2d Cir. 2014). All three conditions exist here.

First, as elaborated below, Judge Nathan clearly abused her discretion in declining to modify the protective order.

Second, Ms. Maxwell has no other adequate means to attain the relief necessary because her request for Judge Preska to reevaluate her unsealing order with the benefit of knowing what everyone else knows [redacted] will become moot once the deposition material is unsealed (as this Court already recognized by staying the unsealing order pending appeal).

Finally, it is appropriate for this Court to issue a writ of mandamus because, as explained in Ms. Maxwell's motion to consolidate, the judges in the Southern District of New York have reached inconsistent decisions to prejudice of Ms. Maxwell. And while there is no dispute Ms. Maxwell has the right to appeal Judge Preska's order, [redacted] And now the government is trying to prevent Ms. Maxwell from

appealing Judge Nathan's order. A writ of mandamus is appropriate because only this Court can guarantee that all the judges below are on the same page.

Issue Presented

Whether Judge Nathan erred in refusing to modify the protective order for the limited purpose of allowing Ms. Maxwell to share with Judge Preska, under seal, [redacted].

Summary of the Argument

This Court has jurisdiction under the collateral order doctrine. Judge Nathan's order (1) completely resolved whether the criminal protective order should be modified, (2) that question is an important issue completely separate from the merits of the action, and (3) it is effectively unreviewable on appeal from a final judgment. Alternatively, mandamus review is appropriate to resolve the conflicting decisions below.

On the merits, this Court should permit modification of the criminal order so Ms. Maxwell can share with Judge Preska, under seal, just how the government came to possess her deposition transcripts, [redacted]. At this point, Judge Preska is the only relevant participant who *doesn't* know this information. If Judge Preska's order unsealing the deposition transcript goes into effect without Judge Preska being offered an

opportunity to reevaluate her decision in light of this information, Ms. Maxwell may never be able to challenge in the criminal case the government's violation of her rights under *Martindell*. Likewise, if Judge Preska is asked to rule on a motion to stay the unsealing until the conclusion of the criminal case without knowledge that the sealed materials [redacted], Ms. Maxwell will never be able to challenge that decision. A modification of the protective order will not prejudice the government, which has not articulated a persuasive reason why Judge Preska should remain in the dark.

Argument

I. Judge Nathan erred in refusing to modify the protective order for the limited purpose of allowing Ms. Maxwell to share with Judge Preska, under seal, material information [redacted]

This appeal is one part of an extraordinary series of events in which six sets of judicial officers are trying to resolve related—sometimes inextricably interrelated—legal questions involving one common party: Ghislaine Maxwell. Those six sets of judicial officers are four district judges [redacted] and two panels of this Court (the panel presiding over *Giuffre v. Maxwell* and the panel presiding over this interlocutory appeal). Yet because of Ms. Maxwell's legal opponents' tactical choices, no one set

of judicial officers has before it the full picture of the facts relevant to the controversies it is trying to resolve.

[redacted] Meanwhile, a forty-year-old decision from this Court squarely holds that the government seeking access to court-protected documents in a civil case to which it is not a party must follow certain procedures to request those documents, yet the government here declined to follow those procedures.

Adding to the extraordinary, Ms. Maxwell is the only person with interests in all six of the judicial proceedings and with at least some knowledge of all of them.

She is trying to ensure that each of the judicial officers in the active cases has the information from the related cases relevant to his or her decisions. Despite her efforts, she has been stymied by seal orders [redacted] and by the protective order in the criminal case.

Ms. Maxwell is in a Catch-22 situation. Judge Preska is presiding over the unsealing of materials subject to the civil protective order. She does not [redacted] Judge Nathan's protective order, which prohibits her from sharing that information with Judge Preska. Ms. Maxwell asked Judge Preska to stay the unseal proceedings so that Ms. Maxwell could secure permission to share criminal-protective-order confidential information, but Judge Preska said there was no factual basis to grant a stay. Ms. Maxwell asked Judge Nathan for permission to share information *under seal* with Judge Preska, a co-equal Article III judge, but Judge Nathan denied the request.

Meanwhile, in this Court, the *Giuffre v. Maxwell* panel lacks the same information Judge Preska did not have when she issued the unseal order that is the subject of the appeal, and the *United States v. Maxwell* panel lacks the context of the

Giuffre v. Maxwell unseal proceedings, into which Ms. Maxwell seeks to introduce criminal protective order-sealed information relevant to Judge Preska's unseal decisions.

This situation is fundamentally unfair to Ms. Maxwell. There is no reason all judicial officers presiding over any case implicating Ms. Maxwell's interests should not have access, whether under seal, *in camera*, or otherwise, to all relevant information, and there is no reason Ms. Maxwell should be barred from providing such relevant information to them.

A. Preservation and standard of review.

Ms. Maxwell preserved this issue for appeal. App. 124–31, 293–98.

This Court reviews for an abuse of discretion an order denying a motion to modify a protective order. *Martindell*, 594 F.2d at 295. A district court by definition abuses its discretion when it makes an error of law. *Koon v. United States*, 518 U.S. 81, 100 (1996).

B. The district court erred in declining to modify the protective order.

Federal Rule of Criminal Procedure 16(d)(1) authorizes district courts to enter or modify protective orders for good cause. Fed. R. Crim. P. 16(d)(1). In this case, several reasons exist for the narrow modification of the criminal protective order Ms. Maxwell proposes.

First, Judge Preska might well reconsider her decision to unseal the deposition material if she knew how the government obtained the material despite the civil protective order.[5] In particular, keeping the deposition material sealed preserves Ms. Maxwell's ability to litigate before Judge Nathan in the criminal case the propriety of the government's circumvention of this Court's decision in *Martindell*, which expressly contemplates an affected party's right to move to quash a grand jury subpoena seeking access to information shielded by a valid protective order. *Martindell*, 524 F.2d at 294. If the deposition material is unsealed, Judge Preska will never have the opportunity to reconsider her decision armed with the knowledge [redacted]

And if the deposition material is unsealed, it may foreclose any argument from Ms. Maxwell to Judge Nathan that the perjury counts should be dismissed or other remedies imposed based on the government's circumvention of *Martindell*. All Ms.

[5] It's irrelevant that Ms. Maxwell originally consented to the provision of the criminal protective order that presently prevents her from sharing with Judge Preska [redacted] App. 91–92. At the time Ms. Maxwell consented to that provision [redacted] Ms. Maxwell's earlier consent to this provision in the protective order does not bear on whether good cause exist for its modification.

Maxwell seeks in this appeal is the ability to make these arguments to Judge Preska and Judge Nathan before it's too late.

Second, to preserve her fundamental constitutional right to a fair trial by an impartial jury, Ms. Maxwell intends to move to stay the unsealing process before Judge Preska. Ample authority supports staying a civil case pending resolution of a related criminal matter. *E.g.*, *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 98 (2d Cir. 2012). But Ms. Maxwell cannot fairly make her case before Judge Preska for a stay unless Judge Preska knows all the relevant facts.

In particular, a central consideration in deciding whether to stay a civil case pending resolution of a criminal case is "the extent to which the issues in the criminal case overlap with those presented in the civil case." *Id.* (quoting *Trs. of Plumbers & Pipefitters Nat'l Pension Fund v. Transworld Mech., Inc.,* 886 F. Supp. 1134, 1139 (S.D.N.Y.1995)). Here, there is no question the two cases overlap,

[redacted]

. The criminal protective order, therefore,

compromises Ms. Maxwell's ability to seek a stay of the unsealing process and thereby safeguard her right to a fair trial in the criminal case.

The government can hardly dispute the merit of Ms. Maxwell's argument for a stay. After all, the government itself moved to intervene and to stay all proceedings in *Doe v. Indyke*, a civil case in which Jane Doe alleges that Epstein and Ms. Maxwell abused and exploited her as a minor. ATTACHMENT B, p 4 (*Doe v. Indyke et al.*, No. 20-cv-00484, ECF Dkt. 81, 9/14/2020 Order Granting Motion to Stay).[6] According to the government, a stay of that case was necessary to "preserv[e] the integrity of the criminal prosecution against [Ms.] Maxwell." *Id.* The court there agreed, and it granted Ms. Maxwell's motion to stay. *Id.* at 12.[7]

In contrast to *Doe v. Indyke*, the government has not moved to intervene in *Giuffre v. Maxwell*, to stay the unsealing process, or to keep the deposition material and Ms. Maxwell's depositions under seal. This makes no principled sense if the government's opposition to modifying the criminal protective order is to be

[6] This Court can take judicial notice of this order. *See* Fed. R. Evid. 201(c)(2).

[7] If a stay in *Doe v. Indyke* preserves the integrity of the criminal prosecution against Ms. Maxwell, Judge Nathan should have modified the criminal protective order so Judge Preska could have evaluated whether keeping the deposition material under seal would similarly "preserve the integrity of the criminal prosecution against Ms. Maxwell."

believed. According to the government, [redacted]

But if that's true, then the government should have moved to intervene before Judge Preska to oppose the unsealing of the deposition material, since, in the government's view, that material is confidential. The (unprincipled) reason for the government's decision not to intervene is obvious: If Ms. Maxwell's depositions are released to the public, the government will argue to Judge Nathan that any violation of *Martindell* was harmless.

It's immaterial that the court stayed *Doe v. Indyke* during discovery while discovery in *Giuffre v. Maxwell* finished in 2017. As this Court recognized in *Louis Vuitton*, "if civil defendants do not elect to assert their Fifth Amendment privilege, and instead fully cooperate with discovery, their 'testimony . . . in their defense in the civil action is likely to constitute admissions of criminal conduct in their criminal prosecution.'" 676 F.3d at 98 (quoting *SEC v. Boock*, No. 09 Civ. 8261(DLC), 2010 WL 2398918, at *2, 2010 U.S. Dist. LEXIS 59498, at *5 (S.D.N.Y. June 15, 2010) (alteration in original)).

In *Giuffre v. Maxwell*, Ms. Maxwell elected not to invoke her Fifth Amendment privilege against self-incrimination in reliance on the civil protective order and this Court's decision in *Martindell*, which guarantees, at the very least, notice and an opportunity to be heard on a government motion to modify a civil protective order to obtain a deposition transcript. *Martindell*, 594 F.2d at 294; App. 368–69. [redacted] This Court should permit Ms. Maxwell to tell Judge Preska what happened and let Judge Preska decide whether the information weighs against unsealing the deposition material or in favor of a stay.

The government insists otherwise, arguing that modification of the criminal protective order would comprise the secrecy of its ongoing grand jury investigation. App. 92. This contention is implausible on its face because Ms. Maxwell's proposed modification of the criminal protective order doesn't threaten to compromise the secrecy of anything. All Ms. Maxwell seeks is permission to share information with Judge Preska *under seal*. [redacted]

[redacted]

Finally, [redacted]

[redacted]

And it shows that Judge Preska erred failing even to acknowledge or address Ms. Maxwell's reliance argument. *Giuffre v. Maxwell*, Case No. 20-2413, OB, p 24. Ms. Maxwell declined to invoke her Fifth Amendment privilege against self-incrimination during her two depositions. She made that decision relying on the civil protective order and this Court's decision in *Martindell*, which holds that

> absent a showing of improvidence in the grant of a Rule 26(c) protective order or some extraordinary circumstance or compelling need, none of which appear here, a witness should be entitled to rely upon the enforceability of a protective order against any third parties, including the Government, and that such an order should not be vacated or modified merely to accommodate the Government's desire to inspect protected testimony for possible use in a criminal investigation, either as evidence or as the subject of a possible perjury charge.

Martindell, 594 F.2d at 296. But unless Judge Nathan's order is reversed in the criminal case, Ms. Maxwell cannot share this information with Judge Preska in the civil case.[8]

Conclusion

In the end, the government's argument amounts to little more than this: Judge Preska should remain in the dark. But there's no principled justification for that position, and this Court should reject it.

This Court should reverse the district court's order denying Ms. Maxwell's motion to modify the protective order.

September 24, 2020.

[8] Nor, unless the cases are consolidated, will the panel of this Court considering the civil appeal know [redacted]

Respectfully submitted,

s/ Adam Mueller

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Certificate of Compliance with Rule 32(A)

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). It contains 7,343 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(III).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6). It has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 pt. Equity.

s/ Adam Mueller

Certificate of Service

I certify that on September 24, 2020, I filed *Ms. Maxwell's Opening Brief* with the Court via CM/ECF, which will send notification of the filing to all counsel of record.

s/ Nicole Simmons

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

MEMORANDUM
OPINION AND ORDER

ALISON J. NATHAN, District Judge:

On August 17, 2020, Defendant Ghislaine Maxwell filed a sealed letter motion seeking an Order modifying the protective order in this case.[1] Specifically, she sought a Court order allowing her to file under seal in certain civil cases ("Civil Cases") materials ("Documents") that she received in discovery from the Government in this case. She also sought permission to

[1] This Order will not refer to any redacted or otherwise confidential information, and as a result it will not be sealed. The Court will adopt the redactions to Defendant's August 17, 2020 letter motion that the Government proposed on August 21, 2020, and it will enter that version into the public docket. The Court's decision to adopt the Government's proposed redactions is guided by the three-part test articulated by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). Under this test, the Court must: (i) determine whether the documents in question are "judicial documents;" (ii) assess the weight of the common law presumption of access to the materials; and (iii) balance competing considerations against the presumption of access. *Id.* at 119-20. "Such countervailing factors include but are not limited to 'the danger of impairing law enforcement or judicial efficiency' and 'the privacy interests of those resisting disclosure.'" *Id.* at 120 (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir.1995) ("*Amodeo II*")). The Government's proposed redactions satisfy this test. First, the Court finds that the defendant's letter motion is "relevant to the performance of the judicial function and useful in the judicial process," thereby qualifying as a "judicial document" for purposes of the first element of the *Lugosch* test. *United States v. Amodeo* ("*Amodeo I*"), 44 F.3d 141, 145 (2d Cir. 1995). Second, the Court assumes that the common law presumption of access attaches, thereby satisfying the second element. But in balancing competing considerations against the presumption of access, the Court finds that the arguments the Government has put forth—including, most notably, the threat that public disclosure of the redacted sections would interfere with an ongoing grand jury investigation—favor the Government's proposed narrowly tailored redactions.

In light of this ruling, the parties are hereby ORDERED to meet and confer with respect to proposed redactions to the Defendant's reply letter, dated August 24, 2020 and the Defendant's August 24, 2020 letter addressing her proposed redactions to the Defendant's August 17, 2020 letter motion. The parties are further ORDERED to submit their proposed redactions no later than September 4, 2020; if the parties cannot agree on their proposed redactions, they shall submit a joint letter to the Court explaining the nature of their dispute.

Attachment A to Opening Brief

reference, but not file, other discovery material that the Government produced in this case. For the reasons that follow, Defendant's requests are DENIED.

Under Federal Rule of Criminal Procedure 16(d)(1), a Court may enter a protective order only after it finds that good cause exists. Within this framework, the Federal Rules of Criminal Procedure leave it to the discretion of the Court to determine whether modification of an existing protective order is warranted.[2] To make that decision, the Court takes into account all relevant factors, including the parties' reliance on the protective order and whether the moving party has sufficiently substantiated a request to deviate from the *status quo* in the instant matter.

On July 30, 2020, this Court entered a protective order in this case, having determined that good cause existed. Dkt. No. 36. The parties agreed that a protective order was warranted. *See* Dkt. No. 35 at 1 ("The parties have met and conferred, resolving nearly all the issues relating to the proposed protective order."). The Defendant's Proposed Protective Order included a provision that stated that all discovery produced by the Government "[s]hall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action." Dkt. No. 29, Ex. A ¶ 1(a). That language was included in the Court's July 30, 2020 protective order. *See* Dkt. No. 36 ¶¶ 1(a), 10(a), 14(a). Shortly thereafter, the Government began to produce discovery.

Upon receipt of some of the discovery, the Defendant filed the instant request, which seeks modification of the protective order in order to use documents produced in the criminal

[2] In the civil context, there is a "strong presumption against the modification of a protective order." *In re Teligent, Inc.,* 640 F.3d 53, 59 (2d Cir. 2011) (citation omitted). Courts in the Second Circuit have applied the standard for modification of protective orders in the civil context to the criminal context. *See, e.g.*, *United States v. Calderon*, No. 3:15-CR-25 (JCH), 2017 WL 6453344, at *2 (D. Conn. Dec. 1, 2017) (applying the civil standard for the modification of a protective order in a criminal case); *United States v. Kerik*, No. 07-CR-1027 (LAP), 2014 WL 12710346 at *1 (S.D.N.Y. July 23, 2014) (same). *See also United States v. Morales*, 807 F.3d 717, 723 (5th Cir. 2015) (applying the standard for "good cause" in the civil context when evaluating whether to modify a protective order entered in a criminal case); *United States v. Wecht*, 484 F.3d 194, 211 (3rd Cir. 2007) (same).

case in other civil proceedings. She bases her request on the premise that disclosure of the Documents to the relevant judicial officers is allegedly necessary to ensure the fair adjudication of issues being litigated in those civil matters. But after fourteen single-spaced pages of heated rhetoric, the Defendant proffers no more than vague, speculative, and conclusory assertions as to why that is the case. She provides no coherent explanation of what argument she intends to make before those courts that requires the presentation of the materials received in discovery in this criminal matter under the existing terms of the protective order in this case. And she furnishes no substantive explanation regarding the relevance of the Documents to decisions to be made in those matters, let alone any explanation of why modifying the protective order in order to allow such disclosure is necessary to ensure the fair adjudication of those matters. In sum, the arguments the Defendant presents to the Court plainly fail to establish good cause. The Defendant's request is DENIED on this basis.

Indeed, good cause for the requested modification of the protective order is further lacking because, as far as this Court can discern, the *facts* she is interested in conveying to the judicial decisionmakers in the Civil Cases are already publicly available, including in the Government's docketed letter on this issue. *See* Dkt. No. 46. In the opening paragraph of her reply letter dated August 24, 2020, the Defendant states that she is essentially seeking to disclose under seal to certain judicial officers the following factual information:

1. Grand jury subpoenas were issued to an entity ("Recipient") after the Government opened a grand jury investigation into Jeffrey Epstein and his possible co-conspirators;
2. The Recipient concluded that it could not turn over materials responsive to the grand jury subpoena absent a modification of the civil protective orders in the civil cases;

3. In February 2019, the Government, *ex parte* and under seal, sought modification of those civil protective orders so as to permit compliance with the criminal grand jury subpoenas;
4. In April 2019, one court ("Court-1") permitted the modification and, subsequently, another court ("Court-2") did not;
5. That as a result of the modification of the civil protective order by Court-1, the Recipient turned over to the Government certain materials that had been covered by the protective order; and
6. That the Defendant learned of this information (sealed by other courts) as a result of Rule 16 discovery in this criminal matter.

With the exception of identifying the relevant judicial decision makers and specific civil matters, all of the information listed above is available in the public record, including in the letter filed on the public docket by the Government on this issue. *See* Dkt. No. 46. Although this Court remains in the dark as to why this information will be relevant to those courts, so that those courts can make their own determination, to the extent it would otherwise be prohibited by the protective order in this matter, the Court hereby permits the defendant to provide to the relevant courts under seal the above information, including the information identifying the relevant judicial decision makers and civil matters.

In addition, the Government has indicated that "there is no impediment to counsel making sealed applications to Court-1 and Court-2, respectively, to unseal the relevant materials." Dkt. No. 46 at 3 n.5. In her reply, the Defendant asserts that she is amenable to such a solution if the Court agrees with the Government that doing so would not contravene the protective order in this case. To the extent it would otherwise be prohibited by the protective

order in this matter, the Defendant may make unsealing applications to those Courts if she wishes.

SO ORDERED.

Dated: September 2, 2020
New York, New York

ALISON J. NATHAN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE,

Plaintiff,

-against-

DARREN K. INDYKE, et al.,

Defendants.

20cv00484 (JGK) (DF)

MEMORANDUM AND ORDER

DEBRA FREEMAN, United States Magistrate Judge:

This civil action, in which plaintiff Jane Doe ("Plaintiff") has sued defendants Darren K. Indyke and Richard D. Kahn, in their capacities as executors of the estate of Jeffrey E. Epstein ("Epstein") (the "Co-Executors"), as well as defendant Ghislaine Maxwell ("Maxwell"), individually (collectively, "Defendants"), for alleged sexual abuse and exploitation when Plaintiff was a minor, has been referred to this Court by the Honorable John G. Koeltl, U.S.D.J., for general pretrial supervision. Currently before this Court is a letter motion filed by defendant Maxwell, seeking a stay of these proceedings pending the resolution of the criminal proceedings against her. (Letter to the Court from Laura A. Menninger, Esq., dated Aug. 19, 2020 ("8/19/20 Menninger Ltr.") (Dkt. 69).) For the reasons discussed below, Maxwell's motion for a stay is granted, and these proceedings shall be stayed in their entirety, pending further order of the Court.

BACKGROUND

Maxwell has been indicted by a grand jury in this District, and she is now being held in custody at the Metropolitan Detention Center ("MDC") as she awaits her criminal trial, which is set to begin on July 12, 2021, before the Honorable Alison J. Nathan, U.S.D.J. (*See id.*, at 2; *see generally United States v. Ghislaine Maxwell*, No. 20cr330 (AJN) (S.D.N.Y.).) On August 19,

Attachment B to Opening Brief

2020, Maxwell filed the letter motion that is now before this Court, requesting a stay of this action until the conclusion of her pending criminal case. (*See* 8/19/20 Menninger Ltr.) In her motion, Maxwell set out the factors relevant to a stay analysis, and argued that not only her own interest, but also the interests of the courts, the public, and the other parties would be best served by the requested stay. (*See generally id*.)

On August 27, 2020, the Co-Executors submitted a letter consenting to the entry of a stay and joining in Maxwell's request that the stay apply to the entire proceeding. (*See* Letter to the Court from Bennet J. Moskowitz, Esq., dated Aug. 27, 2020 ("8/27/20 Moskowitz Ltr.") (Dkt. 77).) The Co-Executors principally argued that this Court should not consider a partial stay of this case (*i.e.*, a stay that would apply solely as to Plaintiff's claims against Maxwell), as a partial stay would unduly prejudice the Co-Executors' ability to defend against Plaintiff's claims and would add unnecessary cost to the litigation. (*See id*., at 1-2.) The Co-Executors also pointed out that, if this matter were stayed, Plaintiff would still be able to pursue a resolution of her claims through the Epstein Victims' Compensation Program (the "Compensation Program") that has been independently instituted, and that has led numerous other plaintiffs in similar cases before the Court to seek voluntary stays of their lawsuits. (*See id.*, at 2-3.)

By letter dated August 27, 2020, Plaintiff vigorously opposed the requested stay, arguing that the relevant factors weigh against granting the requested relief. (*See generally* Letter to the Court from Robert Glassman, Esq., dated Aug. 27, 2020 ("8/27/20 Glassman Ltr.") (Dkt. 78).) In her opposition, Plaintiff contended, *inter alia*, that Maxwell's detention should pose no real impediment to her defense of this action, suggesting that Maxwell, who filed her motion for a stay only after she had first sought discovery from Plaintiff in this case, "appear[ed] to want to gain an unfair advantage by acquiring as much information as she [could] about Plaintiff without

having to divulge anything about herself or the bad conduct she is alleged to have committed." (*Id.*, at 1; *see also id.*, at 4-5 (arguing that Maxwell had already demonstrated her ability to participate actively in this action from jail).) Plaintiff also noted that, under the terms of the Compensation Program, she is not required to agree to a stay of her lawsuit in order to participate in that program. (*Id.*, at 2.) As for the prejudice that Plaintiff would purportedly suffer from a stay of these proceedings, Plaintiff asserted that, "[f]or too long[,] Jeffrey Epstein and Ghislaine Maxwell skirted the consequences of their vile acts," and that she should not have to wait "even longer for justice." (*Id.*, at 4.)

Maxwell filed a reply on September 4, 2020 (*see* Letter to the Court from Laura A. Menninger, Esq., dated Sept. 4, 2020 ("9/4/20 Menninger Reply Ltr.") (Dkt. 79)), contending that Plaintiff had not adequately demonstrated how the requested stay would harm her interests, and taking issue with Plaintiff's assertions that Maxwell could reasonably litigate this case from the MDC (*see id.*).

On September 4, 2020, this Court additionally received a letter from Acting United States Attorney Audrey Strauss, on behalf of the Government, requesting leave to intervene in this matter for the limited purpose of – like Maxwell – seeking a stay of this case, in its entirety, pending the resolution of the Government's criminal prosecution against Maxwell. (*See* Letter to the Court from Audrey Strauss, Acting United States Attorney, by Maurene Comey, Alison Moe, and Lara Pomerantz, Assistant United States Attorneys, dated Sept. 4, 2020 ("9/4/20 Gov't Ltr.") (Dkt. 80).) In its letter, the Government urged this Court to stay this action on the grounds that "a complete stay of this civil action [would] serve the public interest of preserving the integrity of the criminal prosecution against Maxwell and [would] conserve private, public, and judicial

resources; and that those interests [would] outweigh any delay or disruption caused to the resolution of this civil action." (*Id.*, at 1.)

DISCUSSION

I. THE GOVERNMENT'S REQUEST FOR INTERVENTION

The Government is not a party to this civil action against Maxwell, and therefore does not have standing to move for a stay of this action. Thus, for the limited purpose of seeking a stay, the Government has sought leave to intervene in the action. (*See* 9/4/20 Gov't Ltr., at 1.) This Court finds it unnecessary, however, to deal with the Government's letter in an "intervention" framework, which would require an inquiry as to whether the Government meets the standards set out in Rule 24 of the Federal Rules of Civil Procedure. Rather, given that a motion for a stay has already been made by Maxwell, this Court finds it appropriate, in connection with that motion and in the exercise of its discretion, to treat the Government's submission as that of an *amicus curiae*. *See, e.g.*, *South Carolina v. North Carolina*, 558 U.S. 256, 288 (2010) (Roberts, C.J., concurring in part) ("Courts often treat *amicus* participation as an alternative to intervention."); *Washington State Inv. Bd. v. Odebrecht S.A.*, No. 17cv8118 (PGG), 2018 WL 6253877, at *10 n.2 (S.D.N.Y. Sept. 21, 2018) (considering company's submission contesting alternative service on chief executive officer as *amicus* filing); *In GLG Life Tech Corp. Sec. Litig.*, 287 F.R.D. 262, 265 (S.D.N.Y. 2012) (same); *see also Brenner v. Scott*, 298 F.R.D. 689 (N.D. Fla. 2014) (not allowing organization that opposed same-sex marriage to intervene in Plaintiffs' actions challenging Florida's constitutional and statutory provisions banning same-sex marriage, but allowing the organization to be heard as *amicus*). On this basis, this Court has fully considered the views expressed by the Government in its letter.

II. MAXWELL'S MOTION FOR A STAY

A. Applicable Legal Standards

Although staying a civil action pending the completion of a criminal prosecution against a named defendant has been characterized as an "extraordinary remedy," *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 98 (2d Cir. 2012), "courts will not hesitate to grant a stay 'when the interests of justice seem to require' it," *Sec. & Exch. Comm'n v. LaGuardia*, 435 F. Supp. 3d 616, 621 (S.D.N.Y. 2020) (citing *In re Worldcom, Inc. Securities Litigation*, No. 02cv3288 (DLC), 2002 WL 31729501, at *3 (S.D.N.Y. Dec. 5, 2002)) (granting a stay where there was overlap of issues in the civil and criminal cases and explaining that overlap of issues is a particularly significant factor); *see also Trustees of Plumbers & Pipefitters Nat. Pension Fund v. Transworld Mech., Inc.*, 886 F. Supp. 1134 (S.D.N.Y. 1995) (same); *Volmar Distributors, Inc. v. New York Post Co.*, 152 F.R.D. 36, 42 (S.D.N.Y. 1993) (staying civil discovery pending completion of the criminal case against the defendant); *Sec. & Exch. Comm'n v. Shkreli*, No. 15-CV-7175 (KAM) (RML), 2016 WL 1122029, at *7 (E.D.N.Y. Mar. 2, 2016) (same).

Ultimately, the decision as to whether to issue such a stay rests in the discretion of the district court, *Louis Vuitton Malletier*, 676 F.3d at 99, and each case requires a particularized inquiry, *see id.*, at 98. In determining whether a civil action should be stayed in the face of a parallel criminal proceeding, courts in this District have generally been guided by six factors: (1) the extent to which the issues in the criminal case overlap with those presented in the civil case; (2) the status of the criminal case, including whether the defendant has been indicted; (3) the private interests of the plaintiff in proceeding expeditiously weighed against the prejudice to the plaintiff caused by the delay; (4) the private interests of and burden on the defendant; (5) the interests of the court(s); and (6) the public interest. *See id.*; *see also, e.g.*, *Trustees of*

Plumbers and Pipefitters Nat. Pension Fund, 886 F. Supp. at 1139. The party seeking the stay "bears the burden of establishing its need," *Louis Vuitton Malletier*, 676 F.3d at 97 (internal quotation marks and citation omitted), and this burden may be met where, on balance, the relevant factors suggest that proceeding with the civil action will likely result in undue prejudice to the defendant, *see id*. (noting that "absent a showing of undue prejudice . . . there is no reason why [a] plaintiff should be delayed in its efforts to diligently proceed to sustain its claim" (internal quotation marks, alteration, and citation omitted)).

B. The Relevant Factors Weigh in Favor of Granting a Stay of This Action.

In this instance, as discussed below, the relevant factors support Maxell's application for a stay.

1. Overlap Between the Civil and Criminal Cases

"The strongest case for granting a stay is where a party under criminal indictment is required to defend a civil proceeding involving the *same matter*." *Volmar Distributors*, 152 F.R.D. at 39 (emphasis added) (citations omitted); *accord In re Worldcom*, 2002 WL 31729501, at *5. Denying a stay where there is significant factual overlap between the civil and criminal cases may "undermine a defendant's Fifth Amendment privilege against self-incrimination . . . expand the rights of criminal discovery beyond the limits of Rule 16(b) of the Federal Rules of Criminal Procedure, expose the basis of the defense to the prosecution in advance of trial, or otherwise prejudice the case." *Volmar Distributors*, 152 F.R.D. at 39 (citations omitted); *see also Johnson v. New York City Police Dep't*, No. 01cv6570 (RCC) (JCF), 2003 WL 21664882, at *2 (S.D.N.Y. July 16, 2003).

As a threshold matter, this Court finds that, in this instance, there is significant factual overlap between this civil case and the pending criminal case. For example, as Maxwell points

out, both the Indictment in the criminal case and the Complaint in this action contain allegations that Maxwell "groomed" minor victims by taking them to the movies or shopping, that Epstein paid for victims' education, and that Maxwell facilitated Epstein's abusive conduct. (*See* 8/19/20 Menninger Ltr., at 3 (summarizing certain allegations made in both actions and noting that particular allegations in the Indictment "are very similar in time frame and content to those in the Complaint").) The Government, in its submission, has confirmed that the allegations pleaded in this case will necessarily "touch on matters relating to the pending Indictment" (9/4/20 Gov't Ltr., at 2), and has also noted that "given the factual overlap between the civil and criminal cases, allowing the criminal matter to be resolved in the first instance may result in a narrowing of the factual and legal issues before this Court" (*id.*, at 3). Plaintiff, in her opposition, does not contest that there is substantial overlap between the cases, in terms of the people involved, the relevant evidence, or the facts sought to be established. (*See generally* 8/27/20 Glassman Ltr.) Thus, this factor weighs in favor of granting a stay.

2. Status of the Criminal Case

The arguments favoring a stay are also stronger where the criminal case is not merely hypothetical or anticipated, but rather is actively proceeding. In fact, as Maxwell notes, "'[w]hether the defendant has been indicted has been described as "the most important factor" to be considered in the balance of factors.'" (8/19/20 Menninger Ltr., at 4 (quoting *Maldanado v. City of New York*, No. 17cv6618 (AJN), 2018 WL 2561026, at *2 (S.D.N.Y. June 1, 2018)); *see also In re Par Pharmaceutical, Inc. Sec. Litig.*, 133 F.R.D. 12, 13-14 (S.D.N.Y. 1990) (noting that "[t]he weight of authority in this Circuit indicates that courts will stay a civil proceeding when the criminal investigation has ripened into an indictment" (collecting cases).)

Here, Maxwell was indicted by a grand jury on June 29, 2020; she has been detained pending her criminal trial; and her trial date has been set. (8/19/20 Menninger Ltr., at 2.) Should discovery in the civil action proceed, Maxwell would be forced to decide whether to defend herself by making pretrial disclosures and giving deposition testimony (which could be used against her in the criminal case) or to invoke her Fifth Amendment privilege against self-incrimination (which would protect her in the criminal case, but which could well result in an adverse inference being drawn against her in the civil case). (*See id.*, at 4; *see also Louis Vuitton Malletier*, 676 F.3d at 97-98 (discussing the burdens to the Fifth Amendment privilege that may be posed by parallel proceedings).) This legitimate concern, made more real and immediate by the active posture of criminal case, militates in favor of a stay.

3. <u>The Interests of the Plaintiff</u>

Plaintiff asserts that staying this proceeding would harm her interests because, as she is suffering "ongoing damaging effects" from the alleged abuse, and she should not have to wait any longer to hold Defendants accountable. (8/27/20 Glassman Ltr., at 4.) While, as a general matter, plaintiffs have a strong interest in the expeditious resolution of their civil claims, *see Volmar Distributors*, 152 F.R.D. at 40, Plaintiff here has not advanced any particularized reason why a delay would cause her prejudice, such as a likely loss of physical evidence or witness testimony during the period of a stay. (*See* 8/19/20 Menninger Ltr., at 1 (noting that "there is little chance that any evidence will be lost in the interim given the age of the accusations in this case"); *see also id.*, at 4.)

Additionally, although this Court is not suggesting that Plaintiff has any obligation to agree to a stay so as to pursue her claims through the Compensation Program (and, in fact, recognizes that she does not), this Court does note that a stay would not entirely hinder Plaintiff

in her ability to seek redress for the sexual assaults and other tortious conduct on which her claims are based, as, during the pendency of any stay, she would still be able to participate in that program.

Overall, and despite Plaintiff's assertion that a stay would work to her disadvantage, this Court finds that any generalized prejudice that she would suffer as the result of a stay is not sufficient to counterbalance the other factors that the Court should consider, which all heavily favor a stay.

4. The Interests of the Defendant

The private interests of Maxwell, and the burden that she would face in proceeding with discovery in the civil action at this time are significant. As already noted, if civil discovery were to proceed, Maxwell would have to make the difficult decision of whether to assert her Fifth Amendment privilege – a decision that could adversely impact her position in one or the other of the cases she is defending. *See Louis Vuitton*, 676 F.3d at 97. Also, due to heightened restrictions at the MDC during the COVID-19 pandemic (restrictions of which this Court takes judicial notice), this Court understands that counsel has had difficulty, and will likely continue to have difficulty, meeting with Maxwell and arranging for her to review documents or otherwise to confer for the purpose of preparing a defense to this civil case. (*See* 8/19/20 Menninger Ltr., at 5; *see also* 9/4/20 Menninger Reply Ltr., at 2-3.)

This Court finds that not only the existence of the criminal prosecution against Maxwell, but also the particularly (and unusually) restrictive circumstances of her current detention, would necessarily make it harder for Maxwell to participate fully in the discovery process in this action, and would cause her undue prejudice, weighing strongly in favor of a stay.

5. The Interests of the Court

As for the interest of the Court, it appears that staying discovery in the civil case could conserve judicial resources. Where a criminal case can potentially streamline the related civil case, this factor supports a stay. *Sec. & Exch. Comm'n v. Abraaj Inv. Mgmt. Ltd.*, No. 19cv3244 (AJN), 2019 WL 6498282, at *3 (S.D.N.Y. Dec. 3, 2019). As observed by the Government, the pending criminal case against Maxwell may resolve issues of fact common to the two actions, and may therefore reduce the number of issues to be decided in subsequent proceedings in this case. (*See* 9/4/20 Gov't Ltr., at 2.)

Further, although it should not be the decisive factor, this Court also notes that it has some interest in coordinating discovery, where appropriate, among the many civil cases that have been brought in this District against the Epstein estate, and that none of those other cases are currently going forward. This Court additionally notes that tighter restrictions on discovery may be imposed in the context of a criminal prosecution than in a civil litigation, and that, if this civil case were to move forward, restrictions that have already been placed on Maxwell's access to information in her criminal case could have a limiting effect on this Court's ability to supervise discovery here. (*See* 9/4/20 Gov't Ltr., at 3-4 (noting that "Maxwell's access to information about the criminal matter is under the jurisdiction of the Honorable Alison J. Nathan, who has entered a protective order and has issued several rulings regarding the scope of discovery that Maxwell is entitled to and the manner in which she may or may not use that information"); *see also* 8/27/20 Moskowitz Ltr., at 3 (noting that Maxwell had indicated, in her initial disclosures, that, due to the terms of a protective order entered in the criminal case, she would be prohibited from disclosing certain information in the civil case).)

Thus, at least to some extent, the Court's interest weighs in favor of a stay.

6. The Public Interest

Plaintiff argues that the public interest is best served by allowing her claims to proceed. (8/27/20 Glassman Ltr., at 5.) Specifically, she contends that the public benefits from civil litigation when that litigation furnishes the public with information on the torts and crimes of a wrongdoer. (*Id.*) Plaintiff further contends that, as her lawsuit is the only civil case currently being litigated against Maxwell (as any others have been stayed or dismissed), "the continuation of this last remaining civil avenue can furnish the public with critical information as to defendant Maxwell's well known criminal enterprise, how it was operated and all those involved." (*Id.*) It is a mischaracterization of this action, however, to call it the "last remaining civil avenue" for addressing Maxwell's alleged misconduct, as, to the extent other civil litigation against Maxwell has been stayed, it has not been terminated – just as this action, if stayed, would not be ended. Moreover, as the Government argues, the public interest is also served by protecting the integrity of criminal proceedings. (*See generally* 9/4/20 Gov't Ltr.) Should civil discovery proceed, there is a risk that the criminal prosecution could be impaired by the premature disclosure of the testimony of various witnesses or could otherwise be prejudiced. (*See id.*, at 3 (citing *Johnson*, 2003 WL 21664882, at *2).) On balance, this Court finds that this factor weighs in favor of granting a stay.

Accordingly, taking all of the relevant factors into account, this Court finds that Maxwell has met her burden to show that a stay of this action is warranted.

C. The Case Should Be Stayed in Its Entirety.

The Co-Executors, Government, and Plaintiff all agree that, should this Court grant Maxwell's request for a stay, the stay should apply to the case in its entirety. Indeed, the Co-Executors take pains to argue that a partial stay as to only Plaintiff's claims against Maxwell

would unduly prejudice their ability to mount their own defense. (*See* 8/27/20 Moskowitz Ltr., at 1-2.) Where one defendant is a central figure in an action, and where that individual's testimony is of key importance, a partial stay can lead to duplicative discovery efforts. *Trustees of Plumbers and Pipefitters Nat. Pension Fund*, 886 F. Supp. at 1141. This Court is persuaded that, as Maxwell is a central figure in this civil case, a stay of discovery that applies only to her would prejudice the Co-Executors by requiring them to conduct discovery without having the opportunity to depose Maxwell or collect documents in her possession. (*See* 8/27/20 Moskowitz Ltr., at 1-2.) Further, a partial stay could lead to duplicative depositions, as, once the partial stay is lifted, Maxwell would be entitled to question any witnesses (including Plaintiff) who may have already been deposed during the pendency of the partial stay, and, once evidence is obtained from Maxwell, other parties might also wish to re-depose witnesses. (*See id.* at 2.)

CONCLUSION

For all of the foregoing reasons, Maxwell's motion for a stay of this action, in its entirety, pending the completion of the criminal prosecution against her (Dkt. 69) is granted. If, however, the underlying circumstances change over time in a way that could affect this Court's balancing of the relevant factors, then the parties may bring the changed circumstances to this Court's attention, and it will then consider whether the stay should continue or be lifted. Absent any further application to this Court to review the stay, the parties are directed to provide this Court

with a joint status report in no more than 90 days, and every 90 days thereafter, during the pendency of the stay.

Dated: New York, New York
September 14, 2020

SO ORDERED

_____
DEBRA FREEMAN
United States Magistrate Judge

Copies to:

All counsel (via ECF)

20-3061

United States Court of Appeals
for the Second Circuit

UNITED STATES OF AMERICA

Plaintiff-Appellee,

—against—

GHISLAINE MAXWELL,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, 20-CR-330 (AJN)

Appendix Volume 1

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APPEAL,ECF

U.S. District Court
Southern District of New York (Foley Square)
CRIMINAL DOCKET FOR CASE #: 1:20-cr-00330-AJN-1

Case title: USA v. Maxwell Date Filed: 06/29/2020

Assigned to: Judge Alison J. Nathan

Defendant (1)

Ghislaine Maxwell
also known as
Sealed Defendant 1

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Pending Counts

18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS
(1)

18:371.F CONSPIRACY TO ENTICE MINORS TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS
(1s)

18:2422.F COERCION OR ENTICEMENT OFA MINOT TO TRAVEL TO ENGAGE IN ILLEGAL SEX ACTS
(2)

18:2422.F COERCION OR ENTICEMENT OF MINOR TO ENGAGE IN ILLEGAL SEX ACTS
(2s)

18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY
(3)

18:371.F 18:371.F CONSPIRACY TO TRANSPORT MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY
(3s)

18:2423.F COERCION OR ENTICEMENT OF MINOR FEMALE (TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY)
(4)

18:2423.F TRANSPORTATION OF A MINOR WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY
(4s)

18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT (PERJURY)
(5-6)

18:1623.F FALSE DECLARATIONS BEFORE GRAND JURY/COURT
(5s-6s)

Disposition

Highest Offense Level (Opening)

Felony

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

None

Plaintiff

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Date Filed	#	Docket Text
06/29/2020	1	SEALED INDICTMENT as to Sealed Defendant 1 (1) count(s) 1, 2, 3, 4, 5-6. (jm) (Main Document 1 replaced on 7/2/2020) (jm). (Entered: 07/02/2020)
07/02/2020	2	Order to Unseal Indictment as to Sealed Defendant 1. (Signed by Magistrate Judge Katharine H. Parker on 7/2/20)(jm) (Entered: 07/02/2020)
07/02/2020		INDICTMENT UNSEALED as to Ghislaine Maxwell. (jm) (Entered: 07/02/2020)
07/02/2020		Case Designated ECF as to Ghislaine Maxwell. (jm) (Entered: 07/02/2020)
07/02/2020		Case as to Ghislaine Maxwell ASSIGNED to Judge Alison J. Nathan. (jm) (Entered: 07/02/2020)
07/02/2020		Attorney update in case as to Ghislaine Maxwell. Attorney Alex Rossmiller,Maurene Ryan Comey,Alison Gainfort Moe for USA added. (jm) (Entered: 07/02/2020)
07/02/2020	4	MOTION to detain defendant . Document filed by USA as to Ghislaine Maxwell. (Moe, Alison) (Entered: 07/02/2020)
07/02/2020		Arrest of Ghislaine Maxwell in the United States District Court - District of New Hampshire. (jm) (Entered: 07/06/2020)
07/05/2020	5	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from AUSAs Maurene Comey, Alison Moe, and Alex Rossmiller dated July 5, 2020 re: Request to Schedule Initial Appearance Document filed by USA. (Comey, Maurene) (Entered: 07/05/2020)
07/06/2020	6	Rule 5(c)(3) Documents Received as to Ghislaine Maxwell from the United States District Court - District of New Hampshire. (jm) (Entered: 07/06/2020)
07/06/2020	7	ORDER as to Ghislaine Maxwell. This matter has been assigned to me for all purposes. In its July 5, 2020 letter, the Government on behalf of the parties requested that the Court schedule an arraignment, initial appearance, and bail hearing in this matter in the afternoon of Friday, July 10. See Dkt. No. 5. In light of the COVID public health crisis, there are significant safety issues related to in-court proceedings. If the Defendant is willing to waive her physical presence, this proceeding will be conducted remotely. To that end, defense counsel should confer with the Defendant regarding waiving her physical presence. If the Defendant wishes to waive her physical presence for this proceeding, she and her counsel should sign the attached form in advance of the proceeding if feasible.If this proceeding is to be conducted remotely, there are protocols at the Metropolitan Detention Center that limit the times at which the Defendant could be produced so that she could appear by video. In the next week, the Defendant could be produced by video at either 9:00 a.m. on July 9, 2020 or sometime during the morning of July 14, 2020. Counsel are hereby ordered to meet and confer regarding scheduling for this initial proceeding in light of these constraints. If counsel does anticipate proceeding remotely, by 9:00 p.m. tonight, counsel should file a joint letter proposing a date and time for the proceeding consistent with this scheduling information, as well as a revised briefing schedule for the Defendant's bail application.SO ORDERED. (Signed by Judge Alison J. Nathan on 7/6/2020)(jbo) (Entered: 07/06/2020)
07/06/2020	8	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Mark S. Cohen dated July 6, 2020 re: Scheduling (Cohen, Mark) (Entered: 07/06/2020)

07/07/2020	9	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated July 7, 2020 re: scheduling Document filed by USA. (Rossmiller, Alex) (Entered: 07/07/2020)
07/07/2020	10	ORDER as to Ghislaine Maxwell. An arraignment, initial conference, and bail hearing in this matter is hereby scheduled to occur as a remote video/teleconference using an internet platform on July 14, 2020 at 1 p.m. In advance of the conference, Chambers will email counsel with further information on how to access the video conference. To optimize the quality of the video feed, only the Court, the Defendant, defense counsel, and counsel for the Government will appear by video for the proceeding; all others may access the audio of the public proceeding by telephone. Due to the limited capacity of the internet platform system, only one attorney per party may participate by video. Co-counsel, members of the press, and the public may access the audio feed of the proceeding by calling a dial-in number, which the Court will provide in advance of the proceeding by subsequent order. Given the high degree of public interest in this case, a video feed of the remote proceeding will be available for viewing in the Jury Assembly Room located at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY. Due to social distancing requirements, seating will be extremely limited; when capacity is reached no additional persons will be admitted. Per the S.D.N.Y. COVID-19 Courthouse Entry Program, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to arriving at the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. Please see the instructions, attached. Completing the questionnaire ahead of time will save time and effort upon entry. Only persons who meet the entry requirements established by the questionnaire and whose temperatures are below 100.4 degrees will be allowed to enter the courthouse. Face coverings that cover the nose and mouth must be worn at all times. Anyone who fails to comply with the COVID-19 protocols that have been adopted by the Court will be required to leave the courthouse. There are no exceptions. As discussed in the Court's previous order, defense counsel shall, if possible, discuss the Waiver of Right to be Present at Criminal Proceeding with the Defendant prior to the proceeding. See Dkt. No. 7. If the Defendant consents, and is able to sign the form (either personally or, in accordance with Standing Order 20-MC-174 of March 27, 2020, by defense counsel), defense counsel shall file the executed form at least 24 hours prior to the proceeding. In the event the Defendant consents, but counsel is unable to obtain or affix the Defendant's signature on the form, the Court will conduct an inquiry at the outset of the proceeding to determine whether it is appropriate for the Court to add the Defendant's signature to the form. Pursuant to 18 U.S.C. § 3771(c)(1), the Government must make their best efforts to see that crime victims are notified of, and accorded, the rights provided to them in that section. This includes [t]he right to reasonable, accurate, and timely notice of any public court proceeding... involving the crime or of any release... of the accused and "[t]he right to be reasonably heard at any public proceeding in the district court involving release." Id. § 3771(a)(2), (4). The Court will inquire with the Government as to the extent of those efforts. So that appropriate logistical arrangements can be made, the Government shall inform the Court by email within 24 hours in advance of the proceeding if any alleged victim wishes to be heard on the question of detention pending trial. Finally, the time between the Defendant's arrest and July 6, 2020 is excluded under the Speedy Trial Act due to the delay involved in transferring the Defendant from another district. See 18 U.S.C. § 3161(h)(1)(F). And the Court further excludes time under the Speedy Trial Act from today through July 14, 2020. Due to the logistical issues involved in conducting a remote proceeding, the Court finds "that the ends of justice served by [this exclusion] outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). The exclusion is also supported by the need for the parties to discuss a potential protective order, which will facilitate the timely production of discovery in a manner protective of the rights of third

		parties. See Dkt. No. 5. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/7/2020) (jbo) (Entered: 07/07/2020)
07/08/2020	11	MEMO ENDORSEMENT as to Ghislaine Maxwell on 9 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated July 7, 2020 re: scheduling. ENDORSEMENT: The Court hereby sets the following briefing schedule. The Defense response is due by 1:00 p.m. on July 10, 2020. The Government reply is due by 1:00 p.m. on July 13, 2020. Additionally, defense counsel is ordered to file notices of appearance on the docket by the end of the day today. SO ORDERED. (Responses due by 7/10/2020. Replies due by 7/13/2020.) (Signed by Judge Alison J. Nathan on 7/8/2020) (lnl) (Entered: 07/08/2020)
07/08/2020	12	NOTICE OF ATTORNEY APPEARANCE: Mark Stewart Cohen appearing for Ghislaine Maxwell. Appearance Type: Retained. (Cohen, Mark) (Entered: 07/08/2020)
07/08/2020	13	NOTICE OF ATTORNEY APPEARANCE: Christian R. Everdell appearing for Ghislaine Maxwell. Appearance Type: Retained. (Everdell, Christian) (Entered: 07/08/2020)
07/08/2020	14	NOTICE OF ATTORNEY APPEARANCE: Laura A. Menninger appearing for Ghislaine Maxwell. Appearance Type: Retained. (Menninger, Laura) (Entered: 07/08/2020)
07/08/2020	15	MOTION for Jeffrey S. Pagliuca to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC-20605229. **Motion and supporting papers to be reviewed by Clerk's Office staff.** Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit Declaration of Jeffrey S. Pagliuca, # 2 Exhibit Certificate of Good Standing, # 3 Text of Proposed Order Proposed Order)(Pagliuca, Jeffrey) (Entered: 07/08/2020)
07/08/2020	17	(S1) SUPERSEDING INDICTMENT FILED as to Ghislaine Maxwell (1) count(s) 1s, 2s, 3s, 4s, 5s-6s. (jm) (Entered: 07/10/2020)
07/09/2020		**>>>NOTICE REGARDING PRO HAC VICE MOTION. Regarding Document No. 15 MOTION for Jeffrey S. Pagliuca to Appear Pro Hac Vice . Filing fee $ 200.00, receipt number ANYSDC-20605229. Motion and supporting papers to be reviewed by Clerk's Office staff. The document has been reviewed and there are no deficiencies. (aea)** (Entered: 07/09/2020)
07/09/2020	16	ORDER as to Ghislaine Maxwell. As discussed in its previous order, the Court will hold an arraignment, initial conference, and bail hearing in this matter remotely as a video/teleconference on July 14, 2020 at 1 pm. Members of the press and the public in the United States may access the live audio feed of the proceeding by calling 855-268-7844 and using access code 32091812# and PIN 9921299#. Those outside of the United States may access the live audio feed by calling 214-416-0400 and using the same access code and PIN. These phone lines can accommodate approximately 500 callers on a first come, first serve basis. The Court will provide counsel for both sides an additional dial-in number to be used to ensure audio access to the proceeding for non-speaking co-counsel, alleged victims, and any family members of the Defendant. The United States Attorney's Office should email Chambers with information regarding any alleged victims who are entitled, pursuant to 18 U.S.C. §3771(a)(4), to be heard at the bail hearing and who wish to be heard. The Court will then provide information as to the logistics for their dial-in access. As the Court described in a previous order, members of the press and public may watch and listen to the live video feed in the Jury Assembly Room, at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street. See Dkt. No. 10. However, in light of COVID-19, seating will be limited to approximately 60 seats in order to enable appropriate social distancing and ensure public safety. Counsel for the Defendant and the Government may contact Chambers by email if there is a request to accommodate alleged victims or family members of the Defendant. Members of the credentialed in-house press corps may contact the District Executive's Office about seating. Otherwise, all seating will be allocated on a

		first come, first serve basis and in accordance with the S.D.N.Y. COVID-19 Courthouse Entry Program and this Court's previous order of July 7, 2020. See Dkt. No. 10. If conditions change or the Court otherwise concludes that allowing for in-person viewing of the video feed at the courthouse is not consistent with public health, the Court may provide audio access by telephone only. Any photographing, recording, or rebroadcasting of federal court proceedings is prohibited by law. Violation of these prohibitions may result in fines or sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/9/2020)(jbo) (Entered: 07/09/2020)
07/10/2020	18	MEMORANDUM in Opposition by Ghislaine Maxwell re 4 MOTION to detain defendant .. (Cohen, Mark) (Entered: 07/10/2020)
07/10/2020	19	NOTICE OF ATTORNEY APPEARANCE: Mark Stewart Cohen appearing for Ghislaine Maxwell. Appearance Type: Retained. (Cohen, Mark) (Entered: 07/10/2020)
07/10/2020	20	NOTICE OF ATTORNEY APPEARANCE: Christian R. Everdell appearing for Ghislaine Maxwell. Appearance Type: Retained. (Everdell, Christian) (Entered: 07/10/2020)
07/10/2020	21	WAIVER of Personal Appearance at Arraignment and Entry of Plea of Not Guilty by Ghislaine Maxwell. (Everdell, Christian) (Entered: 07/10/2020)
07/13/2020	22	REPLY MEMORANDUM OF LAW in Support by USA as to Ghislaine Maxwell re: 4 MOTION to detain defendant . . (Moe, Alison) (Entered: 07/13/2020)
07/13/2020		ORDER granting 15 Motion for Jeffrey Pagliuca to Appear Pro Hac Vice as to Ghislaine Maxwell (1). (Signed by Judge Alison J. Nathan on 7/13/2020) (kwi) (Entered: 07/13/2020)
07/14/2020	23	ORDER as to Ghislaine Maxwell. For the reasons stated on the record at today's proceeding, the Governments motion to detain the Defendant pending trial is hereby GRANTED (Signed by Judge Alison J. Nathan on 7/14/20)(jw) (Entered: 07/14/2020)
07/14/2020		Minute Entry for proceedings held before Judge Alison J. Nathan:Arraignment as to Ghislaine Maxwell (1) Count 1s,2s,3s,4s,5s-6s held on 7/14/2020. Defendant Ghislaine Maxwell present by video conference with attorney Mark Cohen present by video conference, AUSA Alison Moe, Alex Rossmiller and Maurene Comey for the government present by video conference, Pretrial Service Officer Lea Harmon present by telephone and Court Reporter Kristine Caraannante. Defendant enters a plea of Not Guilty to the S1 indictment. Trial set for July 12, 2021. See Order. Time is excluded under the Speedy Trial Act from today until July 12, 2021. Bail is denied. Defendant is remanded. See Transcript. (jw) (Entered: 07/14/2020)
07/14/2020		Minute Entry for proceedings held before Judge Alison J. Nathan: Plea entered by Ghislaine Maxwell (1) Count 1s,2s,3s,4s,5s-6s Not Guilty. (jw) (Entered: 07/14/2020)
07/14/2020	24	Waiver of Right to be Present at Criminal Proceeding as to Ghislaine Maxwell re: Arraignment, Bail Hearing, Conference. (jw) (Entered: 07/14/2020)
07/15/2020	25	ORDER as to Ghislaine Maxwell. Initial non-electronic discovery, generally to include search warrant applications and subpoena returns, is due by Friday, August 21, 2020. Completion of discovery, to include electronic materials, is due by Monday, November 9, 2020. Motions are due by Monday, December 21, 2020. Motion responses are due by Friday, January 22, 2021. Motion replies are due by Friday, February 5, 2021. Trial is set for Monday, July 12, 2021 (Discovery due by 8/21/2020., Motions due by 12/21/2020) (Signed by Judge Alison J. Nathan on 7/15/20)(jw) (Entered: 07/15/2020)
07/21/2020	26	ORDER as to Ghislaine Maxwell: The Court has received a significant number of letters

		and messages from non-parties that purport to be related to this case. These submissions are either procedurally improper or irrelevant to the judicial function. Therefore, they will not be considered or docketed. The Court will accord the same treatment to any similar correspondence it receives in the future. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/21/2020) (lnl) (Entered: 07/21/2020)
07/21/2020	27	LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated July 21, 2020 re: Local Criminal Rule 23.1 . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 07/21/2020)
07/23/2020	28	ORDER as to Ghislaine Maxwell: The Defense has moved for an order "prohibiting the Government, its agents and counsel for witnesses from making extrajudicial statements concerning this case." Dkt. No. 27 at 1. The Court firmly expects that counsel for all involved parties will exercise great care to ensure compliance with this Court's local rules, including Local Criminal Rule 23.1, and the rules of professional responsibility. In light of this clear expectation, the Court does not believe that further action is needed at this time to protect the Defendant's right to a fair trial by an impartial jury. Accordingly, it denies the Defendant's motion without prejudice. But the Court warns counsel and agents for the parties and counsel for potential witnesses that going forward it will not hesitate to take appropriate action in the face of violations of any relevant rules. The Court will ensure strict compliance with those rules and will ensure that the Defendant's right to a fair trial will be safeguarded. (Signed by Judge Alison J. Nathan on 7/23/2020) (ap) (Entered: 07/23/2020)
07/27/2020	29	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 27, 2020 re: Proposed Protective Order . Document filed by Ghislaine Maxwell. (Attachments: # 1 Exhibit A (Proposed Protective Order))(Everdell, Christian) (Entered: 07/27/2020)
07/27/2020	30	AFFIDAVIT of Christian R. Everdell by Ghislaine Maxwell. (Everdell, Christian) (Entered: 07/27/2020)
07/27/2020	31	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe dated July 27, 2020 re: requesting until 5 p.m. tomorrow to respond to defense counsel's letter, filed July 27, 2020 Document filed by USA. (Moe, Alison) (Entered: 07/27/2020)
07/27/2020	32	MEMO ENDORSEMENT as to Ghislaine Maxwell on 31 LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alison Moe dated July 27, 2020 re: requesting until 5 p.m. tomorrow to respond to defense counsel's letter, filed July 27, 2020. ENDORSEMENT: The Government's response to the Defense's letter is due by 5 p.m. on July 28, 2020. The Defense may file a reply by 5 p.m. on July 29, 2020. Before the Government's response is filed, the parties must meet and confer by phone regarding this issue, and any response from the Government must contain an affirmation that the parties have done so. SO ORDERED. (Responses due by 7/28/2020. Replies due by 7/29/2020.) (Signed by Judge Alison J. Nathan on 7/27/2020) (lnl) (Entered: 07/27/2020)
07/28/2020	33	LETTER RESPONSE to Motion by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated July 28, 2020 re: 29 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 27, 2020 re: Proposed Protective Order .. (Attachments: # 1 Exhibit A (proposed protective order)) (Rossmiller, Alex) (Entered: 07/28/2020)
07/28/2020	34	AFFIDAVIT of Alex Rossmiller by USA as to Ghislaine Maxwell. (Rossmiller, Alex) (Entered: 07/28/2020)
07/29/2020	35	LETTER REPLY TO RESPONSE to Motion by Ghislaine Maxwell addressed to Judge

		Alison J. Nathan from Christian R. Everdell dated July 29, 2020 re 29 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated July 27, 2020 re: Proposed Protective Order .. (Everdell, Christian) (Entered: 07/29/2020)
07/30/2020	36	PROTECTIVE ORDER as to Ghislaine Maxwell...regarding procedures to be followed that shall govern the handling of confidential material. SO ORDERED: (Signed by Judge Alison J. Nathan on 7/30/2020)(bw) (Entered: 07/31/2020)
07/30/2020	37	MEMORANDUM OPINION & ORDER as to Ghislaine Maxwell. Both parties have asked for the Court to enter a protective order. While they agree on most of the language, two areas of dispute have emerged. First, Ms. Maxwell seeks language allowing her to publicly reference alleged victims or witnesses who have spoken on the public record to the media or in public fora, or in litigation relating to Ms. Maxwell or Jeffrey Epstein. Second, Ms. Maxwell seeks language restricting potential Government witnesses and their counsel from using discovery materials for any purpose other than preparing for the criminal trial in this action. The Government has proposed contrary language on both of these issues. For the following reasons, the Court adopts the Government's proposed protective order Under Federal Rule of Criminal Procedure 16(d)(1), "[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief." The good cause standard "requires courts to balance several interests, including whether dissemination of the discovery materials inflicts hazard to others... whether the imposition of the protective order would prejudice the defendant," and "the public's interest in the information." United States v. Smith, 985 F. Supp. 2d 506, 522 (S.D.N.Y. 2013). The party seeking to restrict disclosure bears the burden of showing good cause. Cf. Gambale v. Deutsche Bank AG, 377 F.3d 133, 142 (2d Cir. 2004). First, the Court finds that the Government has met its burden of showing good cause with regard to restricting the ability of Ms. Maxwell to publicly reference alleged victims and witnesses other than those who have publicly identified themselves in this litigation. As a general matter, it is undisputed that there is a strong and specific interest in protecting the privacy of alleged victims and witnesses in this case that supports restricting the disclosure of their identities. Dkt. No. 29 at 3 (acknowledging that as a baseline the protective order should "prohibit[] Ms. Maxwell, defense counsel, and others on the defense team from disclosing or disseminating the identity of any alleged victim or potential witness referenced in the discovery materials"); see also United States v. Corley, No. 13-cr-48, 2016 U.S. Dist. LEXIS 194426, at *11 (S.D.N.Y. Jan. 15, 2016). The Defense argues this interest is significantly diminished for individuals who have spoken on the public record about Ms. Maxwell or Jeffrey Epstein, because they have voluntarily chosen to identify themselves. But not all accusations or public statements are equal. Deciding to participate in or contribute to a criminal investigation or prosecution is a far different matter than simply making a public statement "relating to" Ms. Maxwell or Jeffrey Epstein, particularly since such a statement might have occurred decades ago and have no relevance to the charges in this case. These individuals still maintain a significant privacy interest that must be safeguarded. The exception the Defense seeks is too broad and risks undermining the protections of the privacy of witnesses and alleged victims that is required by law. In contrast, the Government's proffered language would allow Ms. Maxwell to publicly reference individuals who have spoken by name on the record in this case. It also allows the Defense to "referenc[e] the identities of individuals they believe may be relevant... to Potential Defense Witnesses and their counsel during the course of the investigation and preparation of the defense case at trial." Dkt. No. 33-1, 5. This proposal adequately balances the interests at stake. And as the Government's letter notes, see Dkt. No. 33 at 4, to the extent that the Defense needs an exception to the protective order for a specific investigative purpose, they can make applications to the Court on a case-by-case basis. Second, restrictions on the ability of potential witnesses and their counsel to use discovery materials for purposes other than preparing for trial in this case are unwarranted. The request appears unprecedented despite the fact that there have been many high-profile

		criminal matters that had related civil litigation. The Government labors under many restrictions including Rule 6(e) of the Federal Rules of Criminal Procedure, the Privacy Act of 1974, and other policies of the Department of Justice and the U.S. Attorney's Office for the Southern District of New York, all of which the Court expects the Government to scrupulously follow. Furthermore, the Government indicates that it will likely only provide potential witnesses with materials that those witnesses already have in their possession. See Dkt. No. 33 at 6. And of course, those witnesses who do testify at trial would be subject to examination on the record as to what materials were provided or shown to them by the Government. Nothing in the Defense's papers explains how its unprecedented proposed restriction is somehow necessary to ensure a fair trial. For the foregoing reasons, the Court adopts the Government's proposed protective order, which will be entered on the docket. This resolves Dkt. No. 29. SO ORDERED. (Signed by Judge Alison J. Nathan on 7/30/2020)(bw) (Entered: 07/31/2020)
08/10/2020	38	LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access . Document filed by Ghislaine Maxwell. (Everdell, Christian) (Entered: 08/10/2020)
08/10/2020	39	AFFIDAVIT of Christian R. Everdell by Ghislaine Maxwell. (Everdell, Christian) (Entered: 08/10/2020)
08/11/2020	40	MEMO ENDORSEMENT as to Ghislaine Maxwell on re: 38 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access. ENDORSEMENT: The Government is hereby ORDERED to respond to the Defendant's letter motion by Thursday, August 13, 2020. The Defendant's reply, if any, is due on or before Monday, August 17, 2020. (Responses due by 8/13/2020. Replies due by 8/17/2020) (Signed by Judge Alison J. Nathan on 8/11/2020) (ap) (Entered: 08/11/2020)
08/13/2020	41	LETTER RESPONSE in Opposition by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Alex Rossmiller dated August 13, 2020 re: 38 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access .. (Rossmiller, Alex) (Entered: 08/13/2020)
08/17/2020	42	LETTER REPLY TO RESPONSE to Motion by Ghislaine Maxwell addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 17, 2020 re 38 LETTER MOTION addressed to Judge Alison J. Nathan from Christian R. Everdell dated August 10, 2020 re: Discovery Disclosure and Access .. (Everdell, Christian) (Entered: 08/17/2020)
08/17/2020	43	LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated August 17, 2020 re: Request for Permission to Submit Letter Motion in Excess of Three Pages . Document filed by Ghislaine Maxwell. (Pagliuca, Jeffrey) (Entered: 08/17/2020)
08/18/2020	44	ORDER as to Ghislaine Maxwell: On August 17, 2020, the Defendant filed a letter motion seeking a modification of this Court's Protective Order, which the Court entered on July 30, 2020. Defendant also moves to file that letter motion under seal. The Governments opposition to Defendant's letter motion is hereby due Friday, August 21 at 12 p.m. The Defendant's reply is due on Monday, August 24 at 12 p.m. The parties shall propose redactions to the letter briefing on this issue. Alternatively, the parties shall provide support and argument for why the letter motions should be sealed in their entirety. SO ORDERED. (Responses due by 8/21/2020. Replies due by 8/24/2020.) (Signed by Judge Alison J. Nathan on 8/18/2020) (lnl) (Entered: 08/18/2020)
08/20/2020	45	NOTICE OF ATTORNEY APPEARANCE Lara Elizabeth Pomerantz appearing for USA. (Pomerantz, Lara) (Entered: 08/20/2020)

08/20/2020	50	SEALED DOCUMENT placed in vault. (mhe) (Entered: 08/27/2020)
08/21/2020	46	LETTER RESPONSE in Opposition by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Maurene Comey dated August 21, 2020 re: 43 LETTER MOTION addressed to Judge Alison J. Nathan from Jeffrey S. Pagliuca dated August 17, 2020 re: Request for Permission to Submit Letter Motion in Excess of Three Pages .. (Rossmiller, Alex) (Entered: 08/21/2020)
08/21/2020	47	LETTER by USA as to Ghislaine Maxwell addressed to Judge Alison J. Nathan from Maurene Comey dated August 21, 2020 re: Proposed redactions to letter briefing, in response to the Court's Order of August 18, 2020 Document filed by USA. (Rossmiller, Alex) (Entered: 08/21/2020)
08/24/2020	48	LETTER MOTION addressed to Judge Alison J. Nathan from Laura A. Menninger dated August 24, 2020 re: Request to File Under Seal: Proposed Redactions to Request to Modify Protective Order and Reply in Support Thereof . Document filed by Ghislaine Maxwell. (Menninger, Laura) (Entered: 08/24/2020)
08/25/2020	49	MEMORANDUM OPINION AND ORDER: denying without prejudice 38 LETTER MOTION as to Ghislaine Maxwell (1). On August 10, 2020, the Defendant filed a letter motion related to two issues. Dkt. No. 38. First, the Defendant seeks an order directing the Government to disclose to defense counsel immediately the identities of the three alleged victims referenced in the indictment. Second, the Defendant seeks an order directing the Bureau of Prisons ("BOP") to release the Defendant into the general population and to provide her with increased access to the discovery materials. For the reasons that follow, Defendant's requests are DENIED without prejudice....[See this Memorandum Opinion And Order]... III. Conclusion: For the reasons stated above, Defendant's requests contained in Dkt. No. 38 are DENIED without prejudice. Following the close of discovery, the parties shall meet and confer on an appropriate schedule for pre-trial disclosures, including the disclosure of § 3500 material, exhibit lists, and witness lists, taking into account all relevant factors. The Government is hereby ORDERED to submit written status updates every 90 days detailing any material changes to the conditions of Ms. Maxwell's confinement, with particular emphasis on her access to legal materials and ability to communicate with defense counsel. SO ORDERED. (Signed by Judge Alison J. Nathan on 8/25/2020) (bw) (Entered: 08/25/2020)
09/02/2020	51	MEMORANDUMOPINION AND ORDER as to Ghislaine Maxwell: On August 17, 2020, Defendant Ghislaine Maxwell filed a sealed letter motion seeking an Order modifying the protective order in this case. Specifically, she sought a Court order allowing her to file under seal in certain civil cases ("Civil Cases") materials ("Documents") that she received in discovery from the Government in this case. She also sought permission to reference, but not file, other discovery material that the Government produced in this case. For the reasons that follow, Defendant's requests are DENIED. SO ORDERED. (Signed by Judge Alison J. Nathan on 9/2/2020)(See MEMORANDUM OPINION AND ORDER as set forth) (lnl) (Entered: 09/02/2020)
09/02/2020	52	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan, from Jeffrey S. Pagliuca dated 8/17/2020 re: Defense counsel writes with redacted request to modify protective order. (ap) (Entered: 09/02/2020)
09/04/2020	55	NOTICE OF APPEAL by Ghislaine Maxwell from 51 Memorandum & Opinion. Filing fee $ 505.00, receipt number 465401266036. (tp) (Entered: 09/09/2020)
09/08/2020	53	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan dated 8/24/2020 re: Proposed Redactions to Request to Modify Protective Order. (jbo) (Entered: 09/08/2020)
09/08/2020	54	LETTER by Ghislaine Maxwell addressed to Judge Alison J. Nathan dated 8/24/2020 re:

		Reply in Support of Request to Modify Protective Order. (jbo) (Entered: 09/08/2020)
09/09/2020		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ghislaine Maxwell to US Court of Appeals re: 55 Notice of Appeal. (tp) (Entered: 09/09/2020)
09/09/2020		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ghislaine Maxwell re: 55 Notice of Appeal were transmitted to the U.S. Court of Appeals. (tp) (Entered: 09/09/2020)
09/10/2020	56	SEALED DOCUMENT placed in vault. (dn) (Entered: 09/11/2020)
09/10/2020	57	SEALED DOCUMENT placed in vault. (dn) (Entered: 09/11/2020)

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Transaction Receipt

09/18/2020 12:26:48

PACER Login:	amuell01	**Client Code:**	Maxwell Criminal
Description:	Docket Report	**Search Criteria:**	1:20-cr-00330-AJN
Billable Pages:	11	**Cost:**	1.10
Exempt flag:	Not Exempt	**Exempt reason:**	Not Exempt

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	SUPERSEDING INDICTMENT
- v. -	:	S1 20 Cr. 330 (AJN)
GHISLAINE MAXWELL,	:	
Defendant.	:	

COUNT ONE
(Conspiracy to Entice Minors to Travel to Engage in Illegal Sex Acts)

The Grand Jury charges:

OVERVIEW

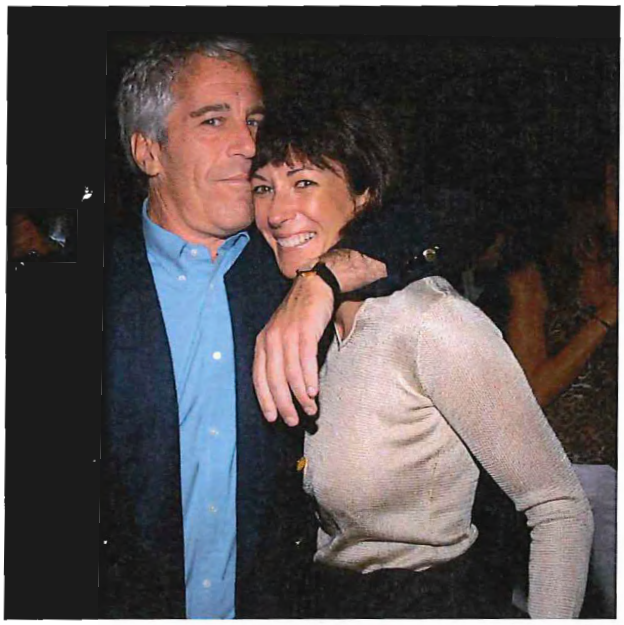
1. The charges set forth herein stem from the role of GHISLAINE MAXWELL, the defendant, in the sexual exploitation and abuse of multiple minor girls by Jeffrey Epstein. In particular, from at least in or about 1994, up to and including at least in or about 1997, MAXWELL assisted, facilitated, and contributed to Jeffrey Epstein's abuse of minor girls by, among other things, helping Epstein to recruit, groom, and ultimately abuse victims known to MAXWELL and Epstein to be under the age of 18. The victims were as young as 14 years old when they were groomed and abused by MAXWELL and Epstein, both of whom knew that certain victims were in fact under the age of 18.

2. As a part and in furtherance of their scheme to abuse minor victims, GHISLAINE MAXWELL, the defendant, and Jeffrey Epstein enticed and caused minor victims to travel to

Epstein's residences in different states, which MAXWELL knew and intended would result in their grooming for and subjection to sexual abuse. Moreover, in an effort to conceal her crimes, MAXWELL repeatedly lied when questioned about her conduct, including in relation to some of the minor victims described herein, when providing testimony under oath in 2016.

FACTUAL BACKGROUND

3. During the time periods charged in this Indictment, GHISLAINE MAXWELL, the defendant, had a personal and professional relationship with Jeffrey Epstein and was among his closest associates. In particular, between in or about 1994 and in or about 1997, MAXWELL was in an intimate relationship with Epstein and also was paid by Epstein to manage his various properties. Over the course of their relationship, MAXWELL and Epstein were photographed together on multiple occasions, including in the below image:



4. Beginning in at least 1994, GHISLAINE MAXWELL, the defendant, enticed and groomed multiple minor girls to engage in sex acts with Jeffrey Epstein, through a variety of means and methods, including but not limited to the following:

a. MAXWELL first attempted to befriend some of Epstein's minor victims prior to their abuse, including by asking the victims about their lives, their schools, and their families. MAXWELL and Epstein would spend time building friendships with minor victims by, for example, taking minor victims to the movies or shopping. Some of these outings would involve MAXWELL and Epstein spending time together with a minor victim, while some would involve MAXWELL or Epstein spending time alone with a minor victim.

b. Having developed a rapport with a victim, MAXWELL would try to normalize sexual abuse for a minor victim by, among other things, discussing sexual topics, undressing in front of the victim, being present when a minor victim was undressed, and/or being present for sex acts involving the minor victim and Epstein.

c. MAXWELL'S presence during minor victims' interactions with Epstein, including interactions where the minor victim was undressed or that involved sex acts with Epstein, helped put the victims at ease because an adult woman was present. For example, in some instances, MAXWELL would

massage Epstein in front of a minor victim. In other instances, MAXWELL encouraged minor victims to provide massages to Epstein, including sexualized massages during which a minor victim would be fully or partially nude. Many of those massages resulted in Epstein sexually abusing the minor victims.

d. In addition, Epstein offered to help some minor victims by paying for travel and/or educational opportunities, and MAXWELL encouraged certain victims to accept Epstein's assistance. As a result, victims were made to feel indebted and believed that MAXWELL and Epstein were trying to help them.

e. Through this process, MAXWELL and Epstein enticed victims to engage in sexual activity with Epstein. In some instances, MAXWELL was present for and participated in the sexual abuse of minor victims. Some such incidents occurred in the context of massages, which developed into sexual encounters.

5. GHISLAINE MAXWELL, the defendant, facilitated Jeffrey Epstein's access to minor victims knowing that he had a sexual preference for underage girls and that he intended to engage in sexual activity with those victims. Epstein's resulting abuse of minor victims included, among other things, touching a victim's breast, touching a victim's genitals, placing a sex toy such as a vibrator on a victim's genitals,

directing a victim to touch Epstein while he masturbated, and directing a victim to touch Epstein's genitals.

MAXWELL AND EPSTEIN'S VICTIMS

6. Between approximately in or about 1994 and in or about 1997, GHISLAINE MAXWELL, the defendant, facilitated Jeffrey Epstein's access to minor victims by, among other things, inducing and enticing, and aiding and abetting the inducement and enticement of, multiple minor victims. Victims were groomed and/or abused at multiple locations, including the following:

a. A a multi-story private residence on the Upper East Side of Manhattan, New York owned by Epstein (the "New York Residence"), which is depicted in the following photograph:

b. An estate in Palm Beach, Florida owned by Epstein (the "Palm Beach Residence"), which is depicted in the following photograph:

c. A ranch in Santa Fe, New Mexico owned by Epstein (the "New Mexico Residence"), which is depicted in the following photograph:

d. MAXWELL's personal residence in London, England.

7. Among the victims induced or enticed by GHISLAINE MAXWELL, the defendant, were minor victims identified herein as Minor Victim-1, Minor Victim-2, and Minor Victim-3. In particular, and during time periods relevant to this Indictment, MAXWELL engaged in the following acts, among others, with respect to minor victims:

a. MAXWELL met Minor Victim-1 when Minor Victim-1 was approximately 14 years old. MAXWELL subsequently interacted with Minor Victim-1 on multiple occasions at Epstein's residences, knowing that Minor Victim-1 was under the age of 18 at the time. During these interactions, which took place between approximately 1994 and 1997, MAXWELL groomed Minor Victim-1 to engage in sexual acts with Epstein through multiple means. First, MAXWELL and Epstein attempted to befriend Minor Victim-1, taking her to the movies and on shopping trips. MAXWELL also asked Minor Victim-1 about school, her classes, her family, and other aspects of her life. MAXWELL then sought to normalize inappropriate and abusive conduct by, among other things, undressing in front of Minor Victim-1 and being present when Minor Victim-1 undressed in front of Epstein. Within the first year after MAXWELL and Epstein met Minor Victim-1, Epstein began sexually abusing Minor Victim-1. MAXWELL was present for

and involved in some of this abuse. In particular, MAXWELL involved Minor Victim-1 in group sexualized massages of Epstein. During those group sexualized massages, MAXWELL and/or Minor Victim-1 would engage in sex acts with Epstein. Epstein and MAXWELL both encouraged Minor Victim-1 to travel to Epstein's residences in both New York and Florida. As a result, Minor Victim-1 was sexually abused by Epstein in both New York and Florida. Minor Victim-1 was enticed to travel across state lines for the purpose of sexual encounters with Epstein, and MAXWELL was aware that Epstein engaged in sexual activity with Minor Victim-1 after Minor-Victim-1 traveled to Epstein's properties, including in the context of a sexualized massage.

b. MAXWELL interacted with Minor Victim-2 on at least one occasion in or about 1996 at Epstein's residence in New Mexico when Minor Victim-2 was under the age of 18. Minor Victim-2 had flown into New Mexico from out of state at Epstein's invitation for the purpose of being groomed for and/or subjected to acts of sexual abuse. MAXWELL knew that Minor Victim-2 was under the age of 18 at the time. While in New Mexico, MAXWELL and Epstein took Minor Victim-2 to a movie and MAXWELL took Minor Victim-2 shopping. MAXWELL also discussed Minor Victim-2's school, classes, and family with Minor Victim-2. In New Mexico, MAXWELL began her efforts to groom Minor Victim-2 for abuse by Epstein by, among other things, providing

an unsolicited massage to Minor Victim-2, during which Minor Victim-2 was topless. MAXWELL also encouraged Minor Victim-2 to massage Epstein.

c. MAXWELL groomed and befriended Minor Victim-3 in London, England between approximately 1994 and 1995, including during a period of time in which MAXWELL knew that Minor Victim-3 was under the age of 18. Among other things, MAXWELL discussed Minor Victim-3's life and family with Minor Victim-3. MAXWELL introduced Minor Victim-3 to Epstein and arranged for multiple interactions between Minor Victim-3 and Epstein. During those interactions, MAXWELL encouraged Minor Victim-3 to massage Epstein, knowing that Epstein would engage in sex acts with Minor Victim-3 during those massages. Minor Victim-3 provided Epstein with the requested massages, and during those massages, Epstein sexually abused Minor Victim-3. MAXWELL was aware that Epstein engaged in sexual activity with Minor Victim-3 on multiple occasions, including at times when Minor Victim-3 was under the age of 18, including in the context of a sexualized massage.

MAXWELL'S EFFORTS TO CONCEAL HER CONDUCT

8. In or around 2016, in the context of a deposition as part of civil litigation, GHISLAINE MAXWELL, the defendant, repeatedly provided false and perjurious statements, under oath, regarding, among other subjects, her role in facilitating the

abuse of minor victims by Jeffrey Epstein, including some of the specific events and acts of abuse detailed above.

STATUTORY ALLEGATIONS

9. From at least in or about 1994, up to and including in or about 1997, in the Southern District of New York and elsewhere, GHISLAINE MAXWELL, the defendant, Jeffrey Epstein, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, enticement, in violation of Title 18, United States Code, Section 2422.

10. It was a part and object of the conspiracy that GHISLAINE MAXWELL, the defendant, Jeffrey Epstein, and others known and unknown, would and did knowingly persuade, induce, entice, and coerce one and more individuals to travel in interstate and foreign commerce, to engage in sexual activity for which a person can be charged with a criminal offense, in violation of Title 18, United States Code, Section 2422.

Overt Acts

11. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. Between in or about 1994 and in or about 1997, when Minor Victim-1 was under the age of 18, MAXWELL participated in multiple group sexual encounters with Epstein and Minor Victim-1 in New York and Florida.

b. In or about 1996, when Minor Victim-1 was under the age of 18, Minor Victim-1 was enticed to travel from Florida to New York for purposes of sexually abusing her at the New York Residence, in violation of New York Penal Law, Section 130.55.

c. In or about 1996, when Minor Victim-2 was under the age of 18, MAXWELL provided Minor Victim-2 with an unsolicited massage in New Mexico, during which Minor Victim-2 was topless.

d. Between in or about 1994 and in or about 1995, when Minor Victim-3 was under the age of 18, MAXWELL encouraged Minor Victim-3 to provide massages to Epstein in London, England, knowing that Epstein intended to sexually abuse Minor Victim-3 during those massages.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Enticement of a Minor to Travel to Engage in Illegal Sex Acts)

The Grand Jury further charges:

12. The allegations contained in paragraphs 1 through 8 of this Indictment are repeated and realleged as if fully set forth within.

13. From at least in or about 1994, up to and including in or about 1997, in the Southern District of New York and elsewhere, GHISLAINE MAXWELL, the defendant, knowingly did persuade, induce, entice, and coerce an individual to travel in interstate and foreign commerce to engage in sexual activity for which a person can be charged with a criminal offense, and attempted to do the same, and aided and abetted the same, to wit, MAXWELL persuaded, induced, enticed, and coerced Minor Victim-1 to travel from Florida to New York, New York on multiple occasions with the intention that Minor Victim-1 would engage in one or more sex acts with Jeffrey Epstein, in violation of New York Penal Law, Section 130.55.

(Title 18, United States Code, Sections 2422 and 2.)

COUNT THREE
(Conspiracy to Transport Minors with Intent to Engage in Criminal Sexual Activity)

The Grand Jury further charges:

14. The allegations contained in paragraphs 1 through 8 of this Indictment are repeated and realleged as if fully set forth within.

15. From at least in or about 1994, up to and including in or about 1997, in the Southern District of New York and elsewhere, GHISLAINE MAXWELL, the defendant, Jeffrey Epstein, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to

wit, transportation of minors, in violation of Title 18, United States Code, Section 2423(a).

16. It was a part and object of the conspiracy that GHISLAINE MAXWELL, the defendant, Jeffrey Epstein, and others known and unknown, would and did, knowingly transport an individual who had not attained the age of 18 in interstate and foreign commerce, with intent that the individual engage in sexual activity for which a person can be charged with a criminal offense, in violation of Title 18, United States Code, Section 2423(a).

Overt Acts

17. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. Between in or about 1994 and in or about 1997, when Minor Victim-1 was under the age of 18, MAXWELL participated in multiple group sexual encounters with EPSTEIN and Minor Victim-1 in New York and Florida.

b. In or about 1996, when Minor Victim-1 was under the age of 18, Minor Victim-1 was enticed to travel from Florida to New York for purposes of sexually abusing her at the

New York Residence, in violation of New York Penal Law, Section 130.55.

c. In or about 1996, when Minor Victim-2 was under the age of 18, MAXWELL provided Minor Victim-2 with an unsolicited massage in New Mexico, during which Minor Victim-2 was topless.

d. Between in or about 1994 and in or about 1995, when Minor Victim-3 was under the age of 18, MAXWELL encouraged Minor Victim-3 to provide massages to Epstein in London, England, knowing that Epstein intended to sexually abuse Minor Victim-3 during those massages.

(Title 18, United States Code, Section 371.)

COUNT FOUR
(Transportation of a Minor with Intent to Engage in Criminal Sexual Activity)

The Grand Jury further charges:

18. The allegations contained in paragraphs 1 through 8 of this Indictment are repeated and realleged as if fully set forth within.

19. From at least in or about 1994, up to and including in or about 1997, in the Southern District of New York and elsewhere, GHISLAINE MAXWELL, the defendant, knowingly did transport an individual who had not attained the age of 18 in interstate and foreign commerce, with the intent that the individual engage in sexual activity for which a person can be charged with a criminal offense, and attempted to do so, and

aided and abetted the same, to wit, MAXWELL arranged for Minor Victim-1 to be transported from Florida to New York, New York on multiple occasions with the intention that Minor Victim-1 would engage in one or more sex acts with Jeffrey Epstein, in violation of New York Penal Law, Section 130.55.

(Title 18, United States Code, Sections 2423(a) and 2.)

COUNT FIVE
(Perjury)

The Grand Jury further charges:

20. The allegations contained in paragraphs 1 through 8 of this Indictment are repeated and realleged as if fully set forth within.

21. On or about April 22, 2016, in the Southern District of New York, GHISLAINE MAXWELL, the defendant, having taken an oath to testify truthfully in a deposition in connection with a case then pending before the United States District Court for the Southern District of New York under docket number 15 Civ. 7433, knowingly made false material declarations, to wit, MAXWELL gave the following underlined false testimony:

Q. Did Jeffrey Epstein have a scheme to recruit underage girls for sexual massages? If you know.

A. I don't know what you're talking about.

. . .

Q. List all the people under the age of 18 that you interacted with at any of Jeffrey's properties?

A. I'm not aware of anybody that I interacted with, other than obviously [the plaintiff] who was 17 at this point.

(Title 18, United States Code, Section 1623.)

COUNT SIX
(Perjury)

The Grand Jury further charges:

22. The allegations contained in paragraphs 1 through 8 of this Indictment are repeated and realleged as if fully set forth within.

23. On or about July 22, 2016, in the Southern District of New York, GHISLAINE MAXWELL, the defendant, having taken an oath to testify truthfully in a deposition in connection with a case then pending before the United States District Court for the Southern District of New York under docket number 15 Civ. 7433, knowingly made false material declarations, to wit, MAXWELL gave the following underlined false testimony:

Q: Were you aware of the presence of sex toys or devices used in sexual activities in Mr. Epstein's Palm Beach house?

A: No, not that I recall. . . .

Q. Do you know whether Mr. Epstein possessed sex toys or devices used in sexual activities?

A. No.

. . .

Q. Other than yourself and the blond and brunette that you have identified as having been involved in three-way sexual activities, with whom did Mr. Epstein have sexual activities?

A. I wasn't aware that he was having sexual activities with anyone when I was with him other than myself.

Q. I want to be sure that I'm clear. Is it your testimony that in the 1990s and 2000s, you were not aware that Mr. Epstein was having sexual activities with anyone other than yourself and the blond and brunette on those few occasions when they were involved with you?

A. That is my testimony, that is correct.

. . .

Q. Is it your testimony that you've never given anybody a massage?

A. I have not given anyone a massage.

Q. You never gave Mr. Epstein a massage, is that your testimony?

A. That is my testimony.

Q. You never gave [Minor Victim-2] a massage is your testimony?

A. I never gave [Minor Victim-2] a massage.

(Title 18, United States Code, Section 1623.)

FOREPERSON

Audrey Strauss
AUDREY STRAUSS
Acting United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

GHISLAINE MAXWELL,

Defendant.

SUPERSEDING INDICTMENT

S1 20 Cr. 330 (AJN)

(18 U.S.C. §§ 371, 1623, 2422, 2423(a), and 2)

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July 21, 2020

VIA ECF

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

Re: *United States v. Ghislaine Maxwell*, Case No. 20 Cr. 330 (AJN), Local Criminal Rule 23.1

Dear Judge Nathan,

On behalf of our client, Ghislaine Maxwell, we write to request that the Court enter an order prohibiting the Government, its agents and counsel for witnesses from making extrajudicial statements concerning this case. Although Ms. Maxwell is presumed innocent, the Government, its agents, witnesses and their lawyers have made, and continue to make, statements prejudicial to a fair trial. The Sixth Amendment to the United States Constitution guarantees an accused the right to an impartial jury. This fundamental guarantee is part of a criminal defendant's basic right to a fair trial, which requires that a defendant must be judged by a jury of her peers based on evidence presented at trial, not in the media. The Court, to safeguard the due process rights of the accused, has "an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity." *Gannett Co. v. DePasquale*, 443 U.S. 368, 378 (1979). This District has given effect to this Sixth Amendment right through Local Criminal Rule 23.1. Accordingly, Ms. Maxwell requests that the Court exercise its express power under Local Criminal Rule 23.1(h) and enter an Order requiring compliance with that rule to prevent further unwarranted and prejudicial pretrial publicity by the Government, its agents, and lawyers for alleged witnesses.

Legal Standard

More than fifty years ago, warning of the danger of pretrial publicity to fair trials, the Supreme Court directed trial judges to take "such steps by rule and regulation that will protect their processes from prejudicial outside interferences. *Neither prosecutors, counsel for defense, the accused, witnesses,* court staff nor enforcement officers coming under the jurisdiction of the court *should be permitted to frustrate its function.*" *Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966) (emphasis added).

In an effort to protect the trial process from "prejudicial outside interferences," this Court promulgated Local Criminal Rule 23.1(a) which provides, in relevant part, that:

> It is the duty of the lawyer or law firm, … and government agents and police officers, not to release or authorize the release of non-public information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which they are associated, if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

To avoid any confusion this Court identified seven "subject matters" that "presumptively involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice." *Id*. at (d). Accordingly, lawyers for parties and witnesses and their agents are prohibited from publicly disseminating information concerning:

> (1) The prior criminal record (including arrests, indictments or other charges of crime), or *the character or reputation of the accused*…;
>
> (2) The existence or contents of any confession, admission or statement given by the accused, or the refusal or failure of the accused to make any statement;
>
> (3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
>
> (4) The identity, testimony or *credibility of prospective witnesses*, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
>
> (5) The possibility of a plea of guilty to the offense charged or a lesser offense;
>
> (6) Information the lawyer or law firm knows is likely to be inadmissible at trial and would if disclosed create a substantial likelihood of prejudicing an impartial trial; and
>
> (7) *Any opinion as to the accused's guilt or innocence* or *as to the merits of the case* or *the evidence in the case*.

Id. at (d)(1-7) (emphasis added).

Recent Prejudicial Public Statements by the Government, its Agents and Counsel to Prospective Witnesses

Recent public statements by the Government, its agents and counsel for prospective witnesses have included presumptively prejudicial information.

On July 2, 2020 Ms. Maxwell was arrested without notice to her lawyers who had been in active communication with the Government for one year. Because plain vanilla surrenders lack the fanfare and attendant media coverage afforded to secret, armed, raids at dawn, the Government chose to invade Ms. Maxwell's New Hampshire residence, arrest her, and stage a media presentation that included numerous statements that prejudice Ms. Maxwell's right to a fair trial.

Immediately following Ms. Maxwell's arrest, Acting U.S. Attorney Audrey Strauss held a press conference in which she commented on Ms. Maxwell's credibility and her ***incorrect*** opinions concerning "guilt or innocence or as to the merits of the case or the evidence in the case" in violation of Local Rule 23.1(d)(1), (4) and (7):

Per the New York Law Journal:

> 'Maxwell lied because the truth, as alleged, was almost unspeakable,' Strauss said at a press conference announcing the charges. 'Maxwell enticed minor girls, got them to trust her and then delivered them into the trap that that she and Epstein had set for them. She pretended to be a woman they could trust, all the while she was setting them up to be sexually abused by Epstein and, in some cases, by Maxwell herself.'[1]

As reported in the Washington Post,

> Strauss, the acting U.S. attorney in Manhattan, said the socialite told that lie and others in deposition because the truth 'was almost unspeakable.'
>
> Acting U.S. Attorney Audrey Strauss called the sex abuse described in the Maxwell case 'the prequel' to the charges they lodged against Epstein….
>
> Maxwell played a critical role in helping Epstein to identify, befriend, and groom minor victims for abuse' … 'In some cases Maxwell participated in the abuse itself.'[2]

[1] https://www.law.com/newyorklawjournal/2020/07/02/ghislaine-maxwell-arrested-in-connection-with-jeffrey-epstein-sex-trafficking-ring/?slreturn=20200614124921

[2] https://www.washingtonpost.com/national-security/ghislaine-maxwell-arrested-jeffrey-epstein/2020/07/02/20c74502-bc69-11ea-8cf5-9c1b8d7f84c6_story.html

Although Ms. Strauss sprinkled her comments with the phrase "as alleged," she presented certain of her statements as fact.[3] Regardless, after Ms. Strauss's remarks, FBI Special Agent William Sweeney went even further, calling Ms. Maxwell "one of the villains in this investigation" and compared her to a snake that "slithered away to a gorgeous property in New Hampshire." Thus, Mr. Sweeney offers the Government's, again flatly wrong, opinions about character and guilt while, at the same time, invoking a semi-biblical reference involving a snake slithering away to a garden in New Hampshire. These types of comments, which serve no compelling law enforcement or investigatory purpose, are prohibited by the local rules of this District.

New York attorney David Boies and his partner Sigrid McCawley, who represent several witnesses in this matter, have also made public and presumptively prejudicial statements in recent days, notwithstanding the fact that such conduct is prohibited by Local Rule 23.1, which applies to lawyers practicing in this District, generally, and lawyers for witnesses, specifically. *See* Rule 23.1(a) and (b).

As reported by the Washington Post, Mr. Boies expressed his views on the prohibited subject of "the possibility of a plea of guilty to the offense charged or a lesser offense" in violation of sections (d)(5) and (7) of the Rule:

> Boies said he thinks Maxwell will be 'under tremendous pressure to cooperate' as she looks for ways to shave time off what may be a significant prison sentence. Maxwell could potentially help prosecutors shed light on Epstein's dealings with other wealthy and influential people who may have had encounters with underaged victims, he said, adding 'There were a lot of people with a lot of public stature who were involved with Epstein.'[4]

Ms. McCawley echoed Mr. Boies, saying that, "The pain [Maxwell] has caused will never go away but today is a step toward healing." *Id*.

Bradley Edwards, another attorney representing witnesses in this matter made similar presumptively prejudicial statements following Ms. Maxwell's arrest:[5]

> 'The reality of how this organization worked was that 99.9% of it was orchestrated for Jeffrey Epstein's personal sexual satisfaction. So to the degree that um there was a main facilitator that started the whole thing, it was Ghislaine.

---

[3] A purported transcript of the press conference is contained on the internet at https://www.rev.com/blog/transcripts/announcement-transcript-of-charges-against-ghislaine-maxwell-in-new-york-jeffrey-epstein-associate-arrested.

[4] https://www.washingtonpost.com/national-security/ghislaine-maxwell-arrested-jeffrey-epstein/2020/07/02/20c74502-bc69-11ea-8cf5-9c1b8d7f84c6_story.html

[5] https://www.youtube.com/watch?v=mDKHdzix2kQ

> So to cooperate in the way that that kind of rumors out there would mean that she's cooperating downwards. She'd be cooperating with people who are much less culpable than her. Will she name names to try to shave years off of what would be a lengthy prison sentence maybe, I think you should probably expect that if she's going to share information that's going to actually help her, it's probably gonna be about unrelated crimes that she may be aware about because with respect to this particular operation, in terms of living people, she's as high as it gets. … I think like most of my clients would really hope that she does cooperate, at least shares the information that she has. I mean I know that it would only be to help herself but the public deserves to know who was involved besides her and Jeffrey Epstein, and only she knows that.

The violations of Rule 23.1 did not stop after Ms. Maxwell's arrest and detention. Following the detention hearing on July 14, 2020, Mr. Boies, counsel for one of the accusers who spoke at the hearing, commented on the content of the hearing. As reported by Bloomberg, Mr. Boies offered his gratuitous critique of defense counsel, commented on the credibility of Ms. Maxwell and his client, and commented on what Mr. Boies considers "evidence" in this case, all in violation of subsections (1), (4), (6), and (7) of the Rule:

> That's a dangerous tactic that might backfire at trial, said David Boies, who represents Farmer and several other women who say they were sexually abused by Epstein and Maxwell. … It's "a tone-deaf argument" that cost Maxwell her credibility, said Boies, who listened to the hearing remotely.
>
> 'To mount a 'blame the victim' defense, particularly in today's world and trying to blame these girls for what happened is so contrary to the evidence, is so contrary to people's normal sense of morality,' Boies said. 'I think that's just going to enrage a jury if she goes to trial -- which I would not do if I were representing her.'
>
> Boies said he was confident Farmer would stand up to cross-examination if there's a trial. Farmer, who addressed the court by telephone, urged the judge not to grant Maxwell bail, calling her a 'sexual predator who groomed and abused me.' Maxwell 'lied under oath and tormented her survivors,' Farmer said. Boies said that Farmer was a 16-year-old who 'wanted to go to college' when she met Maxwell. 'Maxwell and Epstein tell Annie and her mother 'we're having a group of high school students to this ranch to help them get into college,' Boies said. 'But when Annie gets there, there are no high school students, all these claims are fraudulent and she's in this isolated place in New Mexico.'[6]

[6] https://www.bnnbloomberg.ca/ghislaine-maxwell-may-play-the-victim-card-in-trial-defense-1.1465631

Mr. Boies and Ms. McCawley gave on-air interviews with ABC News following Ms. Maxwell's detention that contained repeated, presumptively prejudicial quotes, including: [7]

> Boies: Remember these girls were abused twice, once sexually years ago and then a second time when Epstein and Maxwell and all their enablers began these vicious attacks on their credibility. … No question about it. Maxwell knows where a lot of the bodies are buried. If I was somebody who had participated in their sex trafficking, um, I would not be sleeping easily tonight.
>
> Boies: I think that [the accusers] want to see her go to trial. On the other hand, the arrest and conviction that would come from a plea deal is an enormous step and I think they also recognize that Jeffrey Epstein and Maxwell did not act alone. There are lots of other people that need to be brought to justice.
>
> McCawley: I think that the prosecutors in the Southern District of New York have done an incredible job and they're being very meticulous, they want to make sure that the Indictments stick. …They took a lot of time to be very careful and thoughtful and that gives me a lot of hope that she will remain in prison for the remainder of her life. … This morning was a very joyful and tearful filled morning, it was a wonderful moment in my journey with these survivors, to be able to call them and tell them that the one person's who's been out in the public without being held accountable was finally in prison….She was really, Ghislaine was really the central figure, so she worked hand-in-hand with Jeffrey Epstein to be able to facilitate these crimes over the course of more than two decades; and she was the main person who assisted him and allowed him to be able to perpetrate so many crimes against young females.

These comments violate subsections (6) and (7) of the Rule.

It appears that given any opportunity lawyers associated with the prosecution of this case will offer any opinion that damages Ms. Maxwell's opportunity for a fair trial. Entry of an order prohibiting extrajudicial statements, therefore, is a necessary remedy to avoid further dissemination of prejudicial information. The Court, under Local Criminal Rule 23.1(h) should enter an Order, punishable by contempt, that all lawyers associated with this case, and their agents, comply with the Rule and refrain from publicly commenting on the seven prohibited topics identified in subsection (d).

[7] https://abcnews.go.com/US/ghislaine-maxwell-epsteins-alleged-recruiter-private-battle-public/story?id=71705375

Respectfully Submitted,

Jeffrey S. Pagliuca

cc:
Alex Rossmiller
Allison Moe
Maurene Comey
U.S. Attorney's Office for the Southern District of New York

Mark Cohen
Christian Everdell
Cohen & Gresser LLP

Laura A. Menninger
Haddon, Morgan & Foreman, P.C.

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:

The Defense has moved for an order "prohibiting the Government, its agents and counsel for witnesses from making extrajudicial statements concerning this case." Dkt. No. 27 at 1.

The Court firmly expects that counsel for all involved parties will exercise great care to ensure compliance with this Court's local rules, including Local Criminal Rule 23.1, and the rules of professional responsibility. In light of this clear expectation, the Court does not believe that further action is needed at this time to protect the Defendant's right to a fair trial by an impartial jury. Accordingly, it denies the Defendant's motion without prejudice. But the Court warns counsel and agents for the parties and counsel for potential witnesses that going forward it will not hesitate to take appropriate action in the face of violations of any relevant rules. The Court will ensure strict compliance with those rules and will ensure that the Defendant's right to a fair trial will be safeguarded.

SO ORDERED.

Dated: July 23, 2020
New York, New York

ALISON J. NATHAN
United States District Judge

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July 27, 2020

VIA ECF

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:

On behalf of our client, Ghislaine Maxwell, we respectfully request that the Court enter a protective order in the form attached hereto as Exhibit A.

The government has indicated that it requires the entry of a protective order before producing any discovery material to Ms. Maxwell. On July 9, 2020, the government provided defense counsel with an initial draft of a proposed protective order. Since that time, the parties have conferred several times on conference calls and by email, and have been able to reach agreement on almost all of the provisions of the proposed protective order.

Two key disputes remain, however, which require the Court's guidance. *First*, the defense believes that potential government witnesses and their counsel should be subject to the same restrictions as the defense concerning appropriate use of the discovery materials—namely, if these individuals are given access to discovery materials during trial preparation, they may not use those materials for any purpose other than preparing for trial in the criminal case, and may not post those materials on the Internet. *Second*, the defense believes it should not be restricted from publicly disclosing or disseminating the identity of any alleged victims or potential witnesses referenced in the discovery materials who have already identified themselves by speaking on the public record.

As set forth below, we believe that the proposed protective order contains appropriate restrictions that are no broader than necessary to protect the privacy interests of individuals

referenced in the discovery and guard against prejudicial pretrial publicity, while still ensuring that Ms. Maxwell and defense counsel may adequately prepare and present a full defense at trial.

Legal Standard

Where the government seeks to curtail the use of pretrial discovery, Rule 16(d)(l) of the Federal Rules of Criminal Procedure requires that it "show good cause for the issuance of a protective order." *United States v. Annabi*, No. 10 Cr. 7 (CM), 2010 WL 1253221, at *1 (S.D.N.Y. Mar. 24, 2010). To establish that good cause exists for proposed restrictions in a protective order, the government must show that disclosure will cause "a clearly defined and serious injury." *United States v. Wecht*, 484 F.3d 194, 211 (3d Cir. 2007). A finding of harm "must be based on a particular factual demonstration of potential harm, not on conclusory statements." *United States v. Gangi*, 1998 WL 226196, at *2 (S.D.N.Y. May 4, 1998) (citations and internal quotations omitted). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing." *Wecht*, 484 F.3d at 211.

Courts must be careful not to impose a protective order that is "broader than is necessary" to accomplish its goals. *United States v. Lindh*, 198 F. Supp. 2d 739, 742 (E.D. Va. 2002) (citation and internal quotation marks omitted). Thus, courts are instructed to "weigh the impact" of requested protections and their extent against a defendant's "due process right to prepare and present a full defense at trial." *Id.*

Discussion

1. Restrictions on Use of Discovery Materials

The government and the defense agree that the protective order should include a restriction prohibiting Ms. Maxwell and defense counsel from (i) using discovery materials "for any civil proceeding or any purpose" other than defending or preparing for this criminal action; or (ii) posting discovery materials on the Internet. *See* Ex. A ¶¶ 1(a), 5. The defense's proposed protective order would make those same restrictions applicable to potential government witnesses and their counsel so that they are on equal footing with the defense. *See* Ex. A ¶¶ 3, 5. The government has indicated that it cannot agree to such a restriction, despite acknowledging that it will very likely share discovery materials with those individuals during the course of trial preparation.

As the Court is aware, there is active ongoing civil litigation between Ms. Maxwell and many of the government's potential witnesses. Moreover, numerous potential witnesses and their counsel have already made public statements about this case to the media since Ms. Maxwell's arrest. There is a substantial concern that these individuals will seek to use discovery materials to support their civil cases and future public statements. It is therefore vital that the government's potential witnesses and their counsel be subject to the same restrictions as Ms.

Maxwell with respect to using the criminal discovery material solely for the purpose of this criminal case.

2. Victim/Witness Identities

Ms. Maxwell's proposed protective order prohibits Ms. Maxwell, defense counsel, and others on the defense team from disclosing or disseminating the identity of any alleged victim or potential witness referenced in the discovery materials, but does not prohibit defense counsel from publicly referencing individuals "who have spoken on the public record to the media or in public fora, or in litigation—criminal or otherwise—relating to Jeffrey Epstein or Ghislaine Maxwell." *Id.* ¶ 6. This language, which is nearly identical in all material respects to the language in the protective order approved in the government's criminal prosecution of Mr. Epstein, *see United States v. Epstein*, 19-CR-00490-RMB (S.D.N.Y. July 25, 2019), ensures appropriate privacy protections for alleged victims and should be approved here.

In contrast to the more permissive language it agreed to with respect to Mr. Epstein, the government has taken the position that Ms. Maxwell's defense counsel should only be allowed to disclose the identity of alleged victims or potential witnesses who have spoken by name on the public record "in this case." The government's proposal, however, advances no compelling privacy protections, and instead prevents the defense from making reference to individuals who have already voluntarily publicly disclosed their identities by, among other things, pursuing civil suits in their own name against Ms. Maxwell and/or Mr. Epstein; speaking by name in the public record in Mr. Epstein's criminal proceedings; participating in on-the-record media interviews; or posting comments under their own names on social media. The government's proposed restriction is therefore "broader than necessary" to protect the privacy interests of these individuals who have already chosen to self-identify, and will hinder the defense's ability to conduct further factual investigation, prepare witnesses for trial, and advocate on Ms. Maxwell's behalf.

* * *

For the reasons set forth above, we respectfully submit that the Court should enter Ms. Maxwell's proposed protective order.

Respectfully submitted,

/s/ Christian R. Everdell

Mark S. Cohen
Christian R. Everdell
COHEN & GRESSER LLP
800 Third Avenue, 21st Floor
New York, New York 10022
(212) 957-7600

cc: All counsel of record (via ECF)

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :

- v. - :

GHISLAINE MAXWELL, :

Defendant. :

- - - - - - - - - - - - - - - - - - x

[PROPOSED]
PROTECTIVE ORDER

20 Cr. 330 (AJN)

ALISON J. NATHAN, United States District Judge:

WHEREAS the Government intends to produce to GHISLAINE MAXWELL, the defendant, certain documents and materials that (i) affect the privacy and confidentiality of individuals, (ii) would impede, if prematurely disclosed, the Government's ongoing investigation; (iii) would risk prejudicial pretrial publicity if publicly disseminated, and (iv) is not authorized to be disclosed to the public or disclosed beyond that which is necessary for the defense of this action, and other materials pursuant to Federal Rule of Criminal Procedure 16 ("Rule 16") and pursuant to any other disclosure obligations (collectively, the "Discovery"), which contain sensitive, confidential, or personal identifying information;

WHEREAS, the Government seeks to protect sensitive, confidential, or personal identifying information contained in the materials it produces consistent with Rule 16 or other disclosure obligations;

WHEREAS the defendant, through her counsel, consents to the entry of this Order;

IT HEREBY IS ORDERED:

1. The Discovery disclosed to the defendant ("Defendant") and/or to the defendant's criminal defense attorneys ("Defense Counsel") during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall not be copied or otherwise recorded or transmitted by the Defendant except to Defense Counsel, or except as necessary for the Defendant to take notes, which are not to be further transmitted to anyone other than Defense Counsel;

c) Shall not be disclosed or distributed in any form by the Defendant or her counsel except as set forth in paragraph 1(d) below;

d) May be disclosed only by Defense Counsel and only to the following persons ("Designated Persons"):

i. investigative, secretarial, clerical, or paralegal personnel employed full-time, part-time, or as independent contractors by the defendant's counsel ("Defense Staff");

ii. any expert or potential expert, legal advisor, consultant, or any other individual retained or employed by the Defendant and Defense Counsel for the purpose of assisting in the defense of this case ("Defense Experts/Advisors");

iii. such other persons as hereafter may be authorized by Order of the Court ("Other Authorized Persons");

e) May be provided to prospective witnesses and their counsel (collectively, "Potential Defense Witnesses"), to the extent deemed necessary by defense counsel, for trial preparation. To the extent Discovery materials are disclosed to Potential Defense Witnesses, they agree that any such materials will not be further copied, distributed, or otherwise transmitted to individuals other than the recipient Potential Defense Witnesses.

2. The Defendant and Defense Counsel shall provide a copy of this Order to any Designated Persons to whom they disclose Discovery materials. Prior to disclosure of Discovery materials to Designated Persons, any such Designated Person shall agree to be subject to the terms of this Order by signing a copy hereof and stating that they "Agree to be bound by the terms herein," and providing such copy to Defense Counsel. All such acknowledgments shall be retained by Defense Counsel and shall be subject to *in camera* review by the Court if good cause for review is demonstrated. The Defendant and her counsel need

not obtain signatures from any member of the defense team (*i.e.*, attorneys, experts, consultants, paralegals, investigators, support personnel, and secretarial staff involved in the representation of the defendants in this case), all of whom are nonetheless bound by this Protective Order.

3. To the extent that Discovery is disseminated by the Government to prospective witnesses and their counsel during the course of its investigation and preparation of the Government's case at trial ("Potential Government Witnesses"), the Discovery shall be used by such Potential Government Witnesses and their counsel solely for purposes of preparing for the trial of this criminal action, and shall not be used by such Potential Government Witnesses or their counsel for any civil proceeding or any purpose other than preparing for the trial of this criminal action.

4. To the extent that Discovery is disseminated to Defense Experts/Advisors, Other Authorized Persons, or Potential Defense Witnesses, via means other than electronic mail, Defense Counsel shall encrypt and/or password protect the Discovery.

5. The Government, the Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses and their counsel, Potential Government Witnesses and their counsel, and Other Authorized Persons are prohibited from posting or causing to be posted any of the Discovery or information contained in the Discovery on the Internet,

including any social media website or other publicly available medium.

6. The Government (other than in the discharge of their professional obligations in this matter), the Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses and their counsel, and Other Authorized Persons are strictly prohibited from publicly disclosing or disseminating the identity of any victims or witnesses referenced in the Discovery. This Order does not prohibit Defense Counsel, Defense Staff, Defense Experts/Advisors, or Other Authorized Persons from disclosing the identity of victims or witnesses to Potential Defense Witnesses and their counsel during the course of the investigation and preparation of the defense case at trial. Nor does this Order prohibit Defense Counsel from publicly referencing individuals who have spoken on the public record to the media or in public fora, or in litigation - criminal or otherwise - relating to Jeffrey Epstein or Ghislaine Maxwell.

7. The Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses, and Other Authorized Persons are prohibited from filing publicly as an attachment to a filing or excerpted within a filing the identity of any victims or witnesses referenced in the Discovery, who have not identified themselves publicly as such, unless authorized by the Government in writing or by Order of the

Court. Any such filings much be filed under seal, unless authorized by the Government in writing or by Order of the Court.

8. Copies of Discovery or other materials produced by the Government in this action bearing "confidential" stamps, or designated as "confidential" as described below, and/or electronic Discovery materials designated as "confidential" by the Government, including such materials marked as "confidential" either on the documents or materials themselves, or designated as "confidential" in a folder or document title, are deemed "Confidential Information." The Government shall clearly mark all pages or electronic materials containing Confidential Information, or folder or document titles as necessary, with "confidential" designations.

9. Confidential Information may contain personal identification information of victims, witnesses, or other specific individuals who are not parties to this action, and other confidential information; as well as information that identifies, or could lead to the identification of, witnesses in this matter. The identity of an alleged victim or witness who has identified herself or himself publicly as such shall not be treated as Confidential Information.

10. Defense Counsel may, at any time, notify the Government that Defense Counsel does not concur in the designation of documents or other materials as Confidential

Information. If the Government does not agree to de-designate such documents or materials, Defense Counsel may thereafter move the Court for an Order de-designating such documents or materials. The Government's designation of such documents and materials as Confidential Information will be controlling absent contrary order of the Court.

11. Confidential Information disclosed to the defendant, or Defense Counsel, respectively, during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall be maintained in a safe and secure manner;

c) Shall be reviewed and possessed by the Defendant in hard copy solely in the presence of Defense Counsel;

d) Shall be possessed in electronic format only by Defense Counsel and by appropriate officials of the Bureau of Prisons ("BOP"), who shall provide the defendant with electronic access to the Discovery, including Confidential Information, consistent with the rules and regulations of the BOP, for the Defendant's review;

e) Shall be reviewed by the Defendant solely in the presence of Defense Counsel or when provided access to Discovery materials in electronic format by BOP officials;

f) May be disclosed only by Defense Counsel and only to Designated Persons;

g) May be shown to, either in person, by videoconference, or via a read-only document review platform, but not disseminated to or provided copies of to, Potential Defense Witnesses, to the extent deemed necessary by Defense Counsel, for trial preparation, and after such individual(s) have read and signed this Order acknowledging that such individual(s) are bound by this Order.

12. Copies of Discovery or other materials produced by the Government in this action bearing "highly confidential" stamps or otherwise specifically designated as "highly confidential," and/or electronic Discovery materials designated as "highly confidential" by the Government, including such materials marked as "highly confidential" either on the documents or materials themselves, or designated as "highly confidential" in an index, folder title, or document title, are deemed "Highly Confidential Information." To the extent any Highly Confidential Information is physically produced to the Defendant and Defense Counsel, rather than being made available to the Defendant and Defense Counsel for on-site review, the Government shall clearly mark all such pages or electronic

materials containing Highly Confidential Information with "highly confidential" stamps on the documents or materials themselves.

13. Highly Confidential Information contains nude, partially-nude, or otherwise sexualized images, videos, or other depictions of individuals.

14. Defense Counsel may, at any time, notify the Government that Defense Counsel does not concur in the designation of documents or other materials as Highly Confidential Information. If the Government does not agree to de-designate such documents or materials, Defense Counsel may thereafter move the Court for an Order de-designating such documents or materials. The Government's designation of such documents and materials as Highly Confidential Information will be controlling absent contrary order of the Court.

15. Highly Confidential Information disclosed to Defense Counsel during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall not be disseminated, transmitted, or otherwise copied and provided to Defense Counsel or the Defendant;

c) Shall be reviewed by the Defendant solely in the presence of Defense Counsel;

d) Shall not be possessed outside the presence of Defense Counsel, or maintained, by the Defendant;

e) Shall be made available for inspection by Defense Counsel and the Defendant, under the protection of law enforcement officers or employees; and

f) Shall not be copied or otherwise duplicated by Defense Counsel or the Defendant during such inspections.

16. The Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses, and Other Authorized Persons are prohibited from filing publicly as an attachment to a filing or excerpted within a filing any Confidential Information or Highly Confidential Information referenced in the Discovery, unless authorized by the Government in writing or by Order of the Court. Any such filings much be filed under seal, unless authorized by the Government in writing or by Order of the Court.

17. The provisions of this Order shall not be construed as preventing disclosure of any information that is publicly available or obtained by the Defendant or her Defense Counsel from a source other than the Government.

18. Except for Discovery that has been made part of the record of this case, Defense Counsel shall return to the Government or securely destroy or delete all Discovery,

including but not limited to Confidential Information, within 30 days of the expiration of the period for direct appeal from any verdict in the above-captioned case; the period of direct appeal from any order dismissing any of the charges in the above-captioned case; the expiration of the period for a petition pursuant to 28 U.S.C. § 2255; any period of time required by the federal or state ethics rules applicable to any attorney of record in this case; or the granting of any motion made on behalf of the Government dismissing any charges in the above-captioned case, whichever date is later.

19. The foregoing provisions shall remain in effect unless and until either (a) the Government and Defense Counsel mutually agree in writing otherwise, or (b) this Order is modified by further order of the Court.

20. The Government and Defense Counsel agree to meet and confer in advance of any hearings or trial to discuss and agree to any modifications necessary for the presentation of evidence at those proceedings. In the absence of agreement, Defense Counsel may make an appropriate application to the Court for any such modifications.

SO ORDERED:

Dated: New York, New York
July ___, 2020

_____
HONORABLE ALISON J. NATHAN
United States District Judge

AGREED AND CONSENTED TO:

Dated: July ___, 2020
New York, New York

AUDREY STRAUSS
Acting United States Attorney
Southern District of New York

By: _____
Alison Moe / Alex Rossmiller / Maurene Comey
Assistant United States Attorneys

Dated: July ___, 2020
New York, New York

GHISLAINE MAXWELL

By: _____
Mark Cohen, Esq.
Christian Everdell, Esq.
Jeffrey Pagliuca, Esq.
Laura Menninger, Esq.
Counsel for Ghislaine Maxwell

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

July 28, 2020

VIA ECF

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 with respect to the protective order to be entered in the above-captioned case, and to respond to the defendant's letter and submission of July 27, 2020 (the "Defendant Letter" or "Def. Ltr.") (Dkt. 29). The Government and defense counsel have conferred regarding a protective order several times via telephone and email between July 9, 2020, and today, including as recently as this morning. The Government and defense counsel have come to an agreement on much of the proposed protective order. However, the parties disagree as to two inclusions sought by the defendant which the Government objects to and for which, as detailed herein, the Government submits there is no legal basis. Accordingly, the Government respectfully requests that the Court enter its proposed protective order (the "Government Proposed Order"), which is attached hereto as Exhibit A, and which differs from the defendant's proposed order in those two respects, as further described below.

A. The Defendant's Request to be Permitted to Publicly Name and Identify Victims

As detailed herein, the Government seeks to protect the identities of victims, consistent with their significant privacy interests and the well-established law in this Circuit, and proposes a protective order consistent with those very significant interests. In contrast, the defendant insists that the protective order be modified such that she and her counsel would be permitted to "publicly referenc[e]" individuals, by name, who have "spoken on the public record to the media or in public fora, or in litigation – criminal or otherwise – relating to Jeffrey Epstein or Ghislaine Maxwell."[1]

[1] Specifically, the defendant's proposed protective order differs from the Government's in that it adds a sentence, in its paragraph 6 (which is paragraph 5 of the Government Proposed Order), stating the following: "Nor does this Order prohibit Defense Counsel from publicly referencing individuals who have spoken on the record to the media or in public fora, or in litigation – criminal or otherwise – relating to Jeffrey Epstein or Ghislaine Maxwell." The defendant also either adds

The defendant's demand that she and her counsel be permitted to name *any* individuals who have *ever* publicly identified themselves as a victim of either Epstein or the defendant in *any* "public fora," and at any time, without limitation, is extraordinarily broad, unnecessary, and inappropriate, and should be denied.

As an initial matter, there can be no serious question that there are significant privacy and victim interests at issue here, which the Government Proposed Order seeks to protect. Particularly in the context of victim witnesses, there are compelling reasons to limit public disclosure of victim identities and other sensitive information. Indeed, the Crime Victims' Rights Act, 18 U.S.C. § 3771, requires district courts to implement procedures to ensure that crime victims are accorded, among other rights, "[t]he right to be reasonably protected from the accused," in addition to "[t]he right to be treated with fairness and with respect for the victim's ***dignity and privacy***." *Id.* §§ (a)(1), (a)(8) (emphasis added). Moreover, "the public generally has a strong interest in protecting the identities of . . . victims so that other victims will not be deterred from reporting such crimes." *United States v. Paris*, 2007 WL 1484974, at *2 (D. Conn. May 18, 2007).

Moreover, and consistent with those interests, courts in this Circuit have routinely acknowledged the need to protect victim-witness identities. *See, e.g.*, *United States v. Corley*, 13 Cr. 48 (AJN), 2016 WL 9022508, at *4 (S.D.N.Y. Jan. 15, 2016) ("Because Corley's minor victims have significant privacy and safety interests at stake, while Corley's interests are minimal, the Court finds good cause to modify the protective order in this case to prevent Corley from learning the surnames of the minor victims."); *United States v. Kelly*, 07 Cr. 374 (SJ), 2008 WL 5068820, at *2 (E.D.N.Y. July 10, 2008) ("Given the potentially explicit nature of the government witnesses' expected testimony, the government argues that it is necessary to conceal their identity to protect them from public humiliation and embarrassment. This Court agrees. Thus, the parties [. . .] are hereby prohibited from releasing to anyone, including members of the press, the identity or any identifying information of the government's witnesses."). It is similarly routine in this District for parties in a criminal case to refer to witnesses by pseudonyms (such as "Victim-1" or "Witness-1") to protect the privacy interests of third parties unless and until they testify publicly.

The Government's proposed order endeavors to protect those interests by generally requiring the parties to abstain from identifying any victim by name in any public statement or filing while also ensuring that the defendant and her counsel are fully able to prepare for trial. Indeed, to facilitate the defendant's investigation and preparation for trial, the Government's proposal makes clear that defense counsel and defense staff, including defense investigators, should not be prohibited from referencing identities of individuals in conversations with prospective witnesses, so long as those witnesses and their counsel abstain from further disclosing or disseminating any such identities. *See* Government Proposed Order ¶ 5. The terms of the Government's proposed order also would permit defense counsel to refer to any individual by name in any filing under seal, merely requiring redaction of identifying information or the use of a pseudonym in public filings. The Government further proposes that defense counsel not be prohibited from publicly referencing individuals who have spoken—or who at some future time

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or deletes language in furtherance of its desire to publicly reference victim identities in defense paragraphs 7, 9, and 17 (which are Government Proposed Order paragraphs 6, 7, and 16).

speak—by name on the public record in this case, as one victim has already chosen to do, because those victims, and only those victims, have affirmatively chosen to be publicly identified in connection with this case. These proposals are reasonable, narrowly tailored, and not broader than necessary to protect victims' privacy interests, safety, and well-being, to avoid potential harassment of witnesses by the press and others, and to prevent undue embarrassment and other adverse consequences. At this stage in the case, permitting defense counsel to refer to witnesses by name in sealed filings, to refer to witnesses by name in the course of private conversations during their investigation, and to refer by name to individuals who have made the affirmative choice to be identified by name in connection with this criminal case is more than enough to enable the defendant ability to vigorously pursue her defense.

The defendant has rejected this proposal because, as noted above, she believes that she and her counsel should be permitted to "publicly referenc[e]" individuals, by name, who have "spoken on the public record to the media or in public fora, or in litigation – criminal or otherwise – relating to Jeffrey Epstein or Ghislaine Maxwell." In support of the defendant's application for such sweeping ability to publicly name any such individuals, defense counsel provides only the conclusory assertion that an inability to publicly reference the names of victims, in court proceedings and beyond, will hinder their ability to investigate, prepare witnesses for trial, and advocate on the defendant's behalf. The Government has repeatedly asked defense counsel to explain how or why it would need to publicly name victims of sexual abuse to prepare for trial, and the defense repeatedly has declined to do so, presumably because the argument borders on the absurd.[2]

The Government's proposed protective order would do no such thing. As described above, the Government's proposed order would permit defense counsel and defense staff to reference the identities of individuals they believe may be relevant to the defense to potential witnesses and their counsel (who then would be prohibited from further disclosing or disseminating such identifying information). Government Proposed Order ¶ 5. It would further permit the defendant to publicly identify individuals who have chosen to speak on the record on this case. *Id.* ¶ 6. And it would permit the defendant to reference identifying information in filings made under seal. *See id.*

[2] Despite the Government's requests for clarity on the need for the defendant's requested modification, the sole additional reason provided by defense counsel for why it would be appropriate or necessary to publicly name victims is that certain of these victims have obtained what defense counsel described as the "benefit" of publicly identifying themselves as victims (and thus, as the defendant presumably would have it, deserve whatever public identification and scrutiny the defendant intends to invite upon them). Beyond the offensive notion that victims of sexual abuse experience a "benefit" by making the incredibly difficult decision to share their experience publicly, the suggestion that victims who receive this supposed "benefit" should receive fewer protections than the law ordinarily offers to victims in criminal cases is alarming. Permitting defense counsel to publicly identify witnesses who have not identified themselves on the record in this case risks subjecting witnesses to harassment and intimidation, with no conceivable benefit to the defense other than perhaps discouraging witnesses from cooperating with the Government.

Moreover, the defendant is able, at any time, to apply to the Court for a modification of the protective order should she be able to identify a particularized need to publicly name victims who have not yet identified themselves on the record in this case—as opposed to redacting their names from court filings, or referring to them in an anonymized fashion. As noted, to date, defense counsel has declined to identify to the Court or to the Government *any* example of why doing so would be necessary or helpful to the defense, or even under what circumstances the defense might want to do so.

The defendant's proposal is also extraordinarily broad, and without any temporal or subject matter limitation as to the phrase "public fora." Adopting the defendant's proposal would mean that any individual who has *ever* self-identified as a victim of Jeffrey Epstein or Ghislaine Maxwell publicly in *any capacity* would be subject to public identification by the defendant and her counsel in connection with this case. This would include, as hypothetical examples, someone who spoke to a journalist for a local story in 1997, or posted on a MySpace page followed by a handful of friends in 2005, or made a statement on a small podcast in 2009, or posted on Twitter to a handful of followers in 2013. But none of these examples of ventures into the "public fora" can possibly be construed as efforts by hypothetical victims to consent or choose "to self-identify," Def. Ltr. at 3, in a future criminal case against Ghislaine Maxwell subject to extraordinary public attention and scrutiny.

Additionally, while some individuals have identified themselves as victims without providing any details or additional information about their abuse, the defense contemplates no limitation of publicly associating those individuals with the details of their abuse in public defense statements or filings. In essence, the defendant's proposal seeks authorization to drag into the public glare any victim who has ever made any type of public statement of victimization—no matter how long ago or how brief—without that victim's knowing consent and without any substantive justification. That is particularly troubling given that the Government expects to make productions of discovery and 3500 materials well surpassing its obligations. Those productions will necessarily include the identities of individuals whom the Government does not expect to call as witnesses, and whose accounts—much less identities—will have no bearing on this case. But the defendant's proposal would allow her and her counsel to publicly name them in any public statement or filing at their sole discretion. This is plainly unnecessary for any investigative steps or trial preparation, would be grossly inappropriate and unfair, and would be inconsistent with the Crime Victims' Rights Act.

Conversely, the Government's submission proposes that the defendant and her counsel not be precluded from discussing publicly individuals who identify themselves on the record in this criminal prosecution, because any such individuals will have made a conscious and informed choice to be associated publicly with this case. *See* Government Proposed Order ¶¶ 5, 6, 8. The identity of any other individuals should be protected from public broadcast by the defendant and her counsel.

The defendant argues that her proposed language is "nearly identical in all material respects" to the protective order entered in *United States v. Epstein*, 19 Cr. 490 (RMB) (Dkt. 38). Def. Ltr. at 3. In the first instance, that is false. The protective order in the *Epstein* case included

a provision stating that it did not prohibit defense counsel from publicly referencing individuals who had spoken on the public record *in litigation* relating to Jeffrey Epstein. *Id.* ¶ 4. Here, defense counsel seeks permission to publicly identify any individuals who have self-identified as victims of either the defendant or Epstein "*to the media or in public fora*, or in litigation"—a vastly broader allowance. Indeed, as a comparison, *none* of the hypothetical examples described above would have been subject to public naming and identification under the *Epstein* protective order, but every single one would be under the defendant's proposed order in this case.

Additionally, beyond the differences in the language itself, there are two significant differences between the circumstances of the *Epstein* prosecution and this case. First, at the time the *Epstein* protective order was entered, there were exceptionally few victims who had identified themselves by name in litigation. Accordingly, the practical application of that provision was extremely limited. Second, and related, in the time between when the *Epstein* protective order was entered and the indictment in this case, many more victims have made public statements about their victimization at the hands of Epstein, and the defendant, on their own terms and in their own ways, including by exercising their rights under the Crime Victims' Rights Act in the context of the dismissal of the indictment against Jeffrey Epstein following his suicide. Those victims could not possibly have predicted, much less chosen, that their names would be publicly broadcast by defense counsel in connection with a subsequent criminal case. Victims should be able to continue to come forward, in the ways and in the venues they themselves choose, without fear of reprisal, shaming, or other consequence arising from having their identities broadcast by defense counsel in this case.

In sum, the requested modification to the Government's proposed order sought by the defendant is contrary to precedent and the compelling privacy interests of victims. Moreover, it is without basis in fact or law, and, despite the Government's repeated requests for clarity, the defendant and defense counsel have offered no legitimate reason for their desire to be able to publicly identify any number of victims, in the context of this criminal case and elsewhere, other than a minimal, conclusory statement, without factual examples or legal support.[3] At bottom, the defendant and her counsel seek an unlimited ability to name victims and witnesses publicly, for no discernible reason, and without justification or legal basis. The victims of Ghislaine Maxwell and Jeffrey Epstein have suffered enough, and the Crime Victims' Rights Act, applicable law, and common decency compel far more protection of their privacy interests here than the defense proposal would afford.

B. The Defendant's Demand that the Government Restrict Use of its Own Documents

The defendant and her counsel also ask the Court to impose restrictions upon the Government in its use, through potential witnesses and their counsel, of documents it currently possesses, beyond the already-extensive restrictions and protections applicable to the

[3] To the extent defense counsel attempts to provide such examples or arguments for the first time in a reply filing, the Government respectfully requests leave to reply to those examples or arguments.

Government.[4] The defendant cites not a single example in any district court in the country where such a restriction has been imposed in a protective order. Indeed, it is nonsensical for a protective order to require limitations of the Government in its use of material already in its possession *so that the Government may provide a defendant with discovery*. The defendant's attempt to refuse to agree to receive discovery unless the Government agrees to additional restrictions upon the use of its own materials should be rejected.

As an initial matter, the Government's use of materials it has gathered through its investigation, including through the grand jury process, search warrants, interviews, and voluntary disclosures, is already subject to a wide range of restrictions, including Rule 6(e) of the Federal Rules of Criminal Procedure, the Privacy Act of 1974, and other policies of the Department of Justice and the U.S. Attorney's Office for the Southern District of New York. In this case, consistent with the Government's customary practice, and as the Government has informed defense counsel, the Government has no intention of providing witnesses, victims or their counsel with the entirety of discovery produced to the defendant, nor anything even close to that. Indeed, consistent with its standard practice, the Government rarely *provides* any third party, including a witness, with any material they did not already possess. While the Government does more commonly *show* a witness materials in connection with proffers or trial preparation, the Government rarely if ever shows a witness material she has not already seen, does not have personal knowledge of, or would not have some specific reason to opine upon. Practically speaking, therefore, the concerns defense counsel raises about future use in civil litigation are not likely to occur.

Nevertheless, a criminal protective order is not the appropriate forum for the defendant to demand restrictions on the Government's use of its own materials. To the contrary, as noted above, many of those restrictions are already established by rule and law—standards the defendant makes no suggestion the Government has failed to adhere to in this case. Moreover, the Government as a whole, including those beyond the prosecutors on this case, may have obligations that would conflict with such language in a protective order. For example, the Government has obligations under various statutory and regulatory regimes, including but not limited to the Freedom of Information Act and *Touhy v. Ragen*, 340 U.S. 462 (1951), that cannot be bargained away through a protective order. Indeed, the Government can represent that the Department of Justice has received both FOIA and *Touhy* requests in connection with this investigation, requests to which the Department has a legal obligation to respond appropriately. The Government respectfully submits it would be inappropriate for the defendant to seek—or the Court to order—language in a protective order that conflicts with or supersedes those obligations. Tellingly, the defendant cites no authority or precedent for her request regarding this issue.

By contrast, to the extent the defendant intends to produce reciprocal discovery to the Government, it may in that case be appropriate to limit the Government's use, or third parties' use,

[4] Specifically, the defendant's proposed protective order differs from the Government's in that it adds a paragraph, its paragraph 3, proposing restrictions upon the Government and its potential witnesses, and their counsel, as well as adding language to its paragraph 5, which is Government paragraph 4, further restricting potential government witnesses and their counsel.

of such materials provided by the defendant to the Government. But there is no basis to add additional restrictions upon the Government's use of materials gathered by the Government itself.

The defendant's only counter-argument, as noted—that this Court should put third parties "on equal footing with the defense"—is both unlikely to be relevant given the Government's standard practice, as described above, and, the Government submits, an irrelevant consideration in the context of a criminal protective order. Indeed, the Government respectfully submits that neither it nor this Court is well-positioned to, or should, become the arbiter of what is appropriate or permissible in civil cases.

In sum, the defendant's attempt to restrict the Government and to restrict third parties in this way appears to be unprecedented, and is without legal basis, and should be denied.

Accordingly, for the reasons set forth above, the Court should enter the Government's proposed protective order, which is enclosed, and deny the defendant's motion.

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

By: _____
Alex Rossmiller / Alison Moe / Maurene Comey
Assistant United States Attorneys
Southern District of New York
Tel: (212) 637-2415

Cc: All counsel of record (via ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA - v. - GHISLAINE MAXWELL, Defendant.	**[PROPOSED] PROTECTIVE ORDER** 20 Cr. 330 (AJN)

ALISON J. NATHAN, United States District Judge:

WHEREAS the Government intends to produce to GHISLAINE MAXWELL, the defendant, certain documents and materials that (i) affect the privacy and confidentiality of individuals, (ii) would impede, if prematurely disclosed, the Government's ongoing investigation; (iii) would risk prejudicial pretrial publicity if publicly disseminated, and (iv) is not authorized to be disclosed to the public or disclosed beyond that which is necessary for the defense of this action, and other materials pursuant to Federal Rule of Criminal Procedure 16 ("Rule 16") and pursuant to any other disclosure obligations (collectively, the "Discovery"), which contain sensitive, confidential, or personal identifying information;

WHEREAS, the Government seeks to protect sensitive, confidential, or personal identifying information contained in the materials it produces consistent with Rule 16 or other disclosure obligations;

WHEREAS the Government has applied for the entry of this Order;

IT HEREBY IS ORDERED:

1. The Discovery disclosed to the defendant ("Defendant") and/or to the defendant's criminal defense attorneys ("Defense Counsel") during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall not be copied or otherwise recorded or transmitted by the Defendant, except to Defense Counsel, or except as necessary for the Defendant to take notes, which are not to be further transmitted to anyone other than Defense Counsel;

c) Shall not be disclosed or distributed in any form by the Defendant or her counsel except as set forth in paragraph 1(d) below;

d) May be disclosed only by Defense Counsel and only to the following persons ("Designated Persons"):

i. investigative, secretarial, clerical, or paralegal personnel employed full-time, part-time, or as

independent contractors by the defendant's counsel ("Defense Staff");

ii. any expert or potential expert, legal advisor, consultant, or any other individual retained or employed by the Defendant and Defense Counsel for the purpose of assisting in the defense of this case ("Defense Experts/Advisors");

iii. such other persons as hereafter may be authorized by Order of the Court ("Other Authorized Persons");

e) May be provided to prospective witnesses and their counsel (collectively, "Potential Defense Witnesses"), to the extent deemed necessary by defense counsel, for trial preparation. To the extent Discovery materials are disclosed to Potential Defense Witnesses, they agree that any such materials will not be further copied, distributed, or otherwise transmitted to individuals other than the recipient Potential Defense Witnesses.

2. The Defendant and Defense Counsel shall provide a copy of this Order to any Designated Persons to whom they disclose Discovery materials. Prior to disclosure of Discovery materials to Designated Persons, any such Designated Person shall agree to be subject to the terms of this Order by signing a copy hereof and stating that they "Agree to be bound by the terms herein," and providing such copy to Defense Counsel. All

such acknowledgments shall be retained by Defense Counsel and shall be subject to *in camera* review by the Court if good cause for review is demonstrated. The Defendant and her counsel need not obtain signatures from any member of the defense team (*i.e.*, attorneys, experts, consultants, paralegals, investigators, support personnel, and secretarial staff involved in the representation of the defendants in this case), all of whom are nonetheless bound by this Protective Order.

3. To the extent that Discovery is disseminated to Defense Experts/Advisors, Other Authorized Persons, or Potential Defense Witnesses, via means other than electronic mail, Defense Counsel shall encrypt and/or password protect the Discovery.

4. The Government, the Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses and their counsel, and Other Authorized Persons are prohibited from posting or causing to be posted any of the Discovery or information contained in the Discovery on the Internet, including any social media website or other publicly available medium.

5. The Government (other than in the discharge of their professional obligations in this matter), the Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses and their counsel, and Other Authorized Persons are strictly prohibited from publicly

disclosing or disseminating the identity of any victims or witnesses referenced in the Discovery. This Order does not prohibit Defense Counsel or Defense Staff from referencing the identities of individuals they believe may be relevant to the defense to Potential Defense Witnesses and their counsel during the course of the investigation and preparation of the defense case at trial. Any Potential Defense Witnesses and their counsel who are provided identifying information by Defense Counsel or Defense Staff are prohibited from further disclosing or disseminating such identifying information. This Order does not prohibit Defense Counsel from publicly referencing individuals who have spoken by name on the public record in this case.

6. The Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses, and Other Authorized Persons are prohibited from filing publicly as an attachment to a filing or excerpted within a filing the identity of any victims or witnesses referenced in the Discovery, who have not spoken by name on the public record in this case, unless authorized by the Government in writing or by Order of the Court. Any such filings must be filed under seal, unless authorized by the Government in writing or by Order of the Court.

7. Copies of Discovery or other materials produced by the Government in this action bearing "confidential" stamps, or designated as "confidential" as described below, and/or electronic Discovery materials designated as "confidential" by the Government, including such materials marked as "confidential" either on the documents or materials themselves, or designated as "confidential" in a folder or document title, are deemed "Confidential Information." The Government shall clearly mark all pages or electronic materials containing Confidential Information, or folder or document titles as necessary, with "confidential" designations.

8. Confidential Information may contain personal identification information of victims, witnesses, or other specific individuals who are not parties to this action, and other confidential information; as well as information that identifies, or could lead to the identification of, witnesses in this matter. The identity of an alleged victim or witness who has identified herself or himself publicly as such on the record in this case shall not be treated as Confidential Information.

9. Defense Counsel may, at any time, notify the Government that Defense Counsel does not concur in the designation of documents or other materials as Confidential Information. If the Government does not agree to de-designate such documents or materials, Defense Counsel may thereafter move

the Court for an Order de-designating such documents or materials. The Government's designation of such documents and materials as Confidential Information will be controlling absent contrary order of the Court.

10. Confidential Information disclosed to the defendant, or Defense Counsel, respectively, during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall be maintained in a safe and secure manner;

c) Shall be reviewed and possessed by the Defendant in hard copy solely in the presence of Defense Counsel;

d) Shall be possessed in electronic format only by Defense Counsel and by appropriate officials of the Bureau of Prisons ("BOP"), who shall provide the defendant with electronic access to the Discovery, including Confidential Information, consistent with the rules and regulations of the BOP, for the Defendant's review;

e) Shall be reviewed by the Defendant solely in the presence of Defense Counsel or when provided access to Discovery materials in electronic format by BOP officials;

f) May be disclosed only by Defense Counsel and only to Designated Persons;

g) May be shown to, either in person, by videoconference, or via a read-only document review platform, but not disseminated to or provided copies of to, Potential Defense Witnesses, to the extent deemed necessary by Defense Counsel, for trial preparation, and after such individual(s) have read and signed this Order acknowledging that such individual(s) are bound by this Order.

11. Copies of Discovery or other materials produced by the Government in this action bearing “highly confidential” stamps or otherwise specifically designated as “highly confidential,” and/or electronic Discovery materials designated as “highly confidential” by the Government, including such materials marked as “highly confidential” either on the documents or materials themselves, or designated as “highly confidential” in an index, folder title, or document title, are deemed “Highly Confidential Information.” To the extent any Highly Confidential Information is physically produced to the Defendant and Defense Counsel, rather than being made available to the Defendant and Defense Counsel for on-site review, the

Government shall clearly mark all such pages or electronic materials containing Highly Confidential Information with "highly confidential" stamps on the documents or materials themselves.

12. Highly Confidential Information contains nude, partially-nude, or otherwise sexualized images, videos, or other depictions of individuals.

13. Defense Counsel may, at any time, notify the Government that Defense Counsel does not concur in the designation of documents or other materials as Highly Confidential Information. If the Government does not agree to de-designate such documents or materials, Defense Counsel may thereafter move the Court for an Order de-designating such documents or materials. The Government's designation of such documents and materials as Highly Confidential Information will be controlling absent contrary order of the Court.

14. Highly Confidential Information disclosed to Defense Counsel during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall not be disseminated, transmitted, or otherwise copied and provided to Defense Counsel or the Defendant;

c) Shall be reviewed by the Defendant solely in the presence of Defense Counsel;

d) Shall not be possessed outside the presence of Defense Counsel, or maintained, by the Defendant;

e) Shall be made available for inspection by Defense Counsel and the Defendant, under the protection of law enforcement officers or employees; and

f) Shall not be copied or otherwise duplicated by Defense Counsel or the Defendant during such inspections.

15. The Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses, and Other Authorized Persons are prohibited from filing publicly as an attachment to a filing or excerpted within a filing any Confidential Information or Highly Confidential Information referenced in the Discovery, unless authorized by the Government in writing or by Order of the Court. Any such filings must be filed under seal, unless authorized by the Government in writing or by Order of the Court.

16. The provisions of this Order shall not be construed as preventing disclosure of any information, with the exception of victim or witness identifying information, that is

publicly available or obtained by the Defendant or her Defense Counsel from a source other than the Government.

17. Except for Discovery that has been made part of the record of this case, Defense Counsel shall return to the Government or securely destroy or delete all Discovery, including but not limited to Confidential Information, within 30 days of the expiration of the period for direct appeal from any verdict in the above-captioned case; the period of direct appeal from any order dismissing any of the charges in the above-captioned case; the expiration of the period for a petition pursuant to 28 U.S.C. § 2255; any period of time required by the federal or state ethics rules applicable to any attorney of record in this case; or the granting of any motion made on behalf of the Government dismissing any charges in the above-captioned case, whichever date is later.

18. The foregoing provisions shall remain in effect unless and until either (a) the Government and Defense Counsel mutually agree in writing otherwise, or (b) this Order is modified by further order of the Court.

19. The Government and Defense Counsel agree to meet and confer in advance of any hearings or trial to discuss and agree to any modifications necessary for the presentation of evidence at those proceedings. In the absence of agreement,

Defense Counsel may make an appropriate application to the Court for any such modifications.

SO ORDERED:

Dated: New York, New York
_____ ___, 2020

_____
HONORABLE ALISON J. NATHAN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

GHISLAINE MAXWELL,

Defendant.

- - - - - - - - - - - - - - - - - - - x

PROTECTIVE ORDER

20 Cr. 330 (AJN)

ALISON J. NATHAN, United States District Judge:

WHEREAS the Government intends to produce to GHISLAINE MAXWELL, the defendant, certain documents and materials that (i) affect the privacy and confidentiality of individuals, (ii) would impede, if prematurely disclosed, the Government's ongoing investigation; (iii) would risk prejudicial pretrial publicity if publicly disseminated, and (iv) is not authorized to be disclosed to the public or disclosed beyond that which is necessary for the defense of this action, and other materials pursuant to Federal Rule of Criminal Procedure 16 ("Rule 16") and pursuant to any other disclosure obligations (collectively, the "Discovery"), which contain sensitive, confidential, or personal identifying information;

WHEREAS, the Government seeks to protect sensitive, confidential, or personal identifying information contained in the materials it produces consistent with Rule 16 or other disclosure obligations;

WHEREAS the Government has applied for the entry of this Order;

IT HEREBY IS ORDERED:

1. The Discovery disclosed to the defendant ("Defendant") and/or to the defendant's criminal defense attorneys ("Defense Counsel") during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall not be copied or otherwise recorded or transmitted by the Defendant, except to Defense Counsel, or except as necessary for the Defendant to take notes, which are not to be further transmitted to anyone other than Defense Counsel;

c) Shall not be disclosed or distributed in any form by the Defendant or her counsel except as set forth in paragraph 1(d) below;

d) May be disclosed only by Defense Counsel and only to the following persons ("Designated Persons"):

i. investigative, secretarial, clerical, or paralegal personnel employed full-time, part-time, or as

independent contractors by the defendant's counsel ("Defense Staff");

ii. any expert or potential expert, legal advisor, consultant, or any other individual retained or employed by the Defendant and Defense Counsel for the purpose of assisting in the defense of this case ("Defense Experts/Advisors");

iii. such other persons as hereafter may be authorized by Order of the Court ("Other Authorized Persons");

e) May be provided to prospective witnesses and their counsel (collectively, "Potential Defense Witnesses"), to the extent deemed necessary by defense counsel, for trial preparation. To the extent Discovery materials are disclosed to Potential Defense Witnesses, they agree that any such materials will not be further copied, distributed, or otherwise transmitted to individuals other than the recipient Potential Defense Witnesses.

2. The Defendant and Defense Counsel shall provide a copy of this Order to any Designated Persons to whom they disclose Discovery materials. Prior to disclosure of Discovery materials to Designated Persons, any such Designated Person shall agree to be subject to the terms of this Order by signing a copy hereof and stating that they "Agree to be bound by the terms herein," and providing such copy to Defense Counsel. All

such acknowledgments shall be retained by Defense Counsel and shall be subject to *in camera* review by the Court if good cause for review is demonstrated. The Defendant and her counsel need not obtain signatures from any member of the defense team (*i.e.*, attorneys, experts, consultants, paralegals, investigators, support personnel, and secretarial staff involved in the representation of the defendants in this case), all of whom are nonetheless bound by this Protective Order.

3. To the extent that Discovery is disseminated to Defense Experts/Advisors, Other Authorized Persons, or Potential Defense Witnesses, via means other than electronic mail, Defense Counsel shall encrypt and/or password protect the Discovery.

4. The Government, the Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses and their counsel, and Other Authorized Persons are prohibited from posting or causing to be posted any of the Discovery or information contained in the Discovery on the Internet, including any social media website or other publicly available medium.

5. The Government (other than in the discharge of their professional obligations in this matter), the Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses and their counsel, and Other Authorized Persons are strictly prohibited from publicly

disclosing or disseminating the identity of any victims or witnesses referenced in the Discovery. This Order does not prohibit Defense Counsel or Defense Staff from referencing the identities of individuals they believe may be relevant to the defense to Potential Defense Witnesses and their counsel during the course of the investigation and preparation of the defense case at trial. Any Potential Defense Witnesses and their counsel who are provided identifying information by Defense Counsel or Defense Staff are prohibited from further disclosing or disseminating such identifying information. This Order does not prohibit Defense Counsel from publicly referencing individuals who have spoken by name on the public record in this case.

6. The Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses, and Other Authorized Persons are prohibited from filing publicly as an attachment to a filing or excerpted within a filing the identity of any victims or witnesses referenced in the Discovery, who have not spoken by name on the public record in this case, unless authorized by the Government in writing or by Order of the Court. Any such filings must be filed under seal, unless authorized by the Government in writing or by Order of the Court.

7. Copies of Discovery or other materials produced by the Government in this action bearing "confidential" stamps, or designated as "confidential" as described below, and/or electronic Discovery materials designated as "confidential" by the Government, including such materials marked as "confidential" either on the documents or materials themselves, or designated as "confidential" in a folder or document title, are deemed "Confidential Information." The Government shall clearly mark all pages or electronic materials containing Confidential Information, or folder or document titles as necessary, with "confidential" designations.

8. Confidential Information may contain personal identification information of victims, witnesses, or other specific individuals who are not parties to this action, and other confidential information; as well as information that identifies, or could lead to the identification of, witnesses in this matter. The identity of an alleged victim or witness who has identified herself or himself publicly as such on the record in this case shall not be treated as Confidential Information.

9. Defense Counsel may, at any time, notify the Government that Defense Counsel does not concur in the designation of documents or other materials as Confidential Information. If the Government does not agree to de-designate such documents or materials, Defense Counsel may thereafter move

the Court for an Order de-designating such documents or materials. The Government's designation of such documents and materials as Confidential Information will be controlling absent contrary order of the Court.

10. Confidential Information disclosed to the defendant, or Defense Counsel, respectively, during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall be maintained in a safe and secure manner;

c) Shall be reviewed and possessed by the Defendant in hard copy solely in the presence of Defense Counsel;

d) Shall be possessed in electronic format only by Defense Counsel and by appropriate officials of the Bureau of Prisons ("BOP"), who shall provide the defendant with electronic access to the Discovery, including Confidential Information, consistent with the rules and regulations of the BOP, for the Defendant's review;

e) Shall be reviewed by the Defendant solely in the presence of Defense Counsel or when provided access to Discovery materials in electronic format by BOP officials;

f) May be disclosed only by Defense Counsel and only to Designated Persons;

g) May be shown to, either in person, by videoconference, or via a read-only document review platform, but not disseminated to or provided copies of to, Potential Defense Witnesses, to the extent deemed necessary by Defense Counsel, for trial preparation, and after such individual(s) have read and signed this Order acknowledging that such individual(s) are bound by this Order.

11. Copies of Discovery or other materials produced by the Government in this action bearing "highly confidential" stamps or otherwise specifically designated as "highly confidential," and/or electronic Discovery materials designated as "highly confidential" by the Government, including such materials marked as "highly confidential" either on the documents or materials themselves, or designated as "highly confidential" in an index, folder title, or document title, are deemed "Highly Confidential Information." To the extent any Highly Confidential Information is physically produced to the Defendant and Defense Counsel, rather than being made available to the Defendant and Defense Counsel for on-site review, the

Government shall clearly mark all such pages or electronic materials containing Highly Confidential Information with "highly confidential" stamps on the documents or materials themselves.

12. Highly Confidential Information contains nude, partially-nude, or otherwise sexualized images, videos, or other depictions of individuals.

13. Defense Counsel may, at any time, notify the Government that Defense Counsel does not concur in the designation of documents or other materials as Highly Confidential Information. If the Government does not agree to de-designate such documents or materials, Defense Counsel may thereafter move the Court for an Order de-designating such documents or materials. The Government's designation of such documents and materials as Highly Confidential Information will be controlling absent contrary order of the Court.

14. Highly Confidential Information disclosed to Defense Counsel during the course of proceedings in this action:

a) Shall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action;

b) Shall not be disseminated, transmitted, or otherwise copied and provided to Defense Counsel or the Defendant;

c) Shall be reviewed by the Defendant solely in the presence of Defense Counsel;

d) Shall not be possessed outside the presence of Defense Counsel, or maintained, by the Defendant;

e) Shall be made available for inspection by Defense Counsel and the Defendant, under the protection of law enforcement officers or employees; and

f) Shall not be copied or otherwise duplicated by Defense Counsel or the Defendant during such inspections.

15. The Defendant, Defense Counsel, Defense Staff, Defense Experts/Advisors, Potential Defense Witnesses, and Other Authorized Persons are prohibited from filing publicly as an attachment to a filing or excerpted within a filing any Confidential Information or Highly Confidential Information referenced in the Discovery, unless authorized by the Government in writing or by Order of the Court. Any such filings must be filed under seal, unless authorized by the Government in writing or by Order of the Court.

16. The provisions of this Order shall not be construed as preventing disclosure of any information, with the exception of victim or witness identifying information, that is

publicly available or obtained by the Defendant or her Defense Counsel from a source other than the Government.

17. Except for Discovery that has been made part of the record of this case, Defense Counsel shall return to the Government or securely destroy or delete all Discovery, including but not limited to Confidential Information, within 30 days of the expiration of the period for direct appeal from any verdict in the above-captioned case; the period of direct appeal from any order dismissing any of the charges in the above-captioned case; the expiration of the period for a petition pursuant to 28 U.S.C. § 2255; any period of time required by the federal or state ethics rules applicable to any attorney of record in this case; or the granting of any motion made on behalf of the Government dismissing any charges in the above-captioned case, whichever date is later.

18. The foregoing provisions shall remain in effect unless and until either (a) the Government and Defense Counsel mutually agree in writing otherwise, or (b) this Order is modified by further order of the Court.

19. The Government and Defense Counsel agree to meet and confer in advance of any hearings or trial to discuss and agree to any modifications necessary for the presentation of evidence at those proceedings. In the absence of agreement,

Defense Counsel may make an appropriate application to the Court for any such modifications.

SO ORDERED:

Dated: New York, New York
July 30, 2020

HONORABLE ALISON J. NATHAN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

MEMORANDUM
OPINION & ORDER

ALISON J. NATHAN, District Judge:

Both parties have asked for the Court to enter a protective order. While they agree on most of the language, two areas of dispute have emerged. First, Ms. Maxwell seeks language allowing her to publicly reference alleged victims or witnesses who have spoken on the public record to the media or in public fora, or in litigation relating to Ms. Maxwell or Jeffrey Epstein. Second, Ms. Maxwell seeks language restricting potential Government witnesses and their counsel from using discovery materials for any purpose other than preparing for the criminal trial in this action. The Government has proposed contrary language on both of these issues. For the following reasons, the Court adopts the Government's proposed protective order.

Under Federal Rule of Criminal Procedure 16(d)(1), "[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief." The good cause standard "requires courts to balance several interests, including whether dissemination of the discovery materials inflicts hazard to others . . . whether the imposition of the protective order would prejudice the defendant," and "the public's interest in the information." *United States v. Smith*, 985 F. Supp. 2d 506, 522 (S.D.N.Y. 2013). The party seeking to restrict disclosure bears the burden of showing good cause. *Cf. Gambale v. Deutsche Bank AG*, 377 F.3d 133, 142 (2d Cir. 2004).

First, the Court finds that the Government has met its burden of showing good cause with regard to restricting the ability of Ms. Maxwell to publicly reference alleged victims and witnesses other than those who have publicly identified themselves in this litigation. As a general matter, it is undisputed that there is a strong and specific interest in protecting the privacy of alleged victims and witnesses in this case that supports restricting the disclosure of their identities. Dkt. No. 29 at 3 (acknowledging that as a baseline the protective order should "prohibit[] Ms. Maxwell, defense counsel, and others on the defense team from disclosing or disseminating the identity of any alleged victim or potential witness referenced in the discovery materials"); *see also United States v. Corley*, No. 13-cr-48, 2016 U.S. Dist. LEXIS 194426, at *11 (S.D.N.Y. Jan. 15, 2016). The Defense argues this interest is significantly diminished for individuals who have spoken on the public record about Ms. Maxwell or Jeffrey Epstein, because they have voluntarily chosen to identify themselves. But not all accusations or public statements are equal. Deciding to participate in or contribute to a criminal investigation or prosecution is a far different matter than simply making a public statement "relating to" Ms. Maxwell or Jeffrey Epstein, particularly since such a statement might have occurred decades ago and have no relevance to the charges in this case. These individuals still maintain a significant privacy interest that must be safeguarded. The exception the Defense seeks is too broad and risks undermining the protections of the privacy of witnesses and alleged victims that is required by law. In contrast, the Government's proffered language would allow Ms. Maxwell to publicly reference individuals who have spoken by name on the record in this case. It also allows the Defense to "referenc[e] the identities of individuals they believe may be relevant . . . to Potential Defense Witnesses and their counsel during the course of the investigation and preparation of the defense case at trial." Dkt. No. 33-1, ¶ 5. This proposal adequately balances the interests at

stake. And as the Government's letter notes, *see* Dkt. No. 33 at 4, to the extent that the Defense needs an exception to the protective order for a specific investigative purpose, they can make applications to the Court on a case-by-case basis.

Second, restrictions on the ability of potential witnesses and their counsel to use discovery materials for purposes other than preparing for trial in this case are unwarranted. The request appears unprecedented despite the fact that there have been many high-profile criminal matters that had related civil litigation. The Government labors under many restrictions including Rule 6(e) of the Federal Rules of Criminal Procedure, the Privacy Act of 1974, and other policies of the Department of Justice and the U.S. Attorney's Office for the Southern District of New York, all of which the Court expects the Government to scrupulously follow. Furthermore, the Government indicates that it will likely only provide potential witnesses with materials that those witnesses already have in their possession. *See* Dkt. No. 33 at 6. And of course, those witnesses who do testify at trial would be subject to examination on the record as to what materials were provided or shown to them by the Government. Nothing in the Defense's papers explains how its unprecedented proposed restriction is somehow necessary to ensure a fair trial.

For the foregoing reasons, the Court adopts the Government's proposed protective order, which will be entered on the docket.

This resolves Dkt. No. 29.

SO ORDERED.

Dated: July 30, 2020
New York, New York

ALISON J. NATHAN
United States District Judge

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

August 21, 2020

VIA ECF

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 letter of August 17, 2020 (the "Defense Letter"), requesting that the Court enter an order permitting the defendant to file under seal in certain civil cases (the "Civil Cases") discovery materials produced by the Government in the instant criminal case, and to refer to, but not file, additional other discovery materials produced by the Government in the Civil Cases. Those applications should be denied.[1]

As an initial matter, the Government has already produced, and will continue to produce, substantial volumes of materials in discovery consistent with its obligations. Those include materials the Government obtained via search warrant, grand jury subpoenas, or other investigative methods available only to the Government. Indeed, the Government has already produced more than 165,000 pages of discovery to the defense, including the materials relevant to the Defense Letter. Through her most recent application, the defendant seeks permission to use, in unrelated civil litigation, materials produced pursuant to the protective order in this case and designated "Confidential" thereunder. As detailed herein, the Government's designation is entirely appropriate given that the materials—court orders and applications—have been kept under seal by the issuing judges, and pertain to an ongoing criminal investigation.

[1] The Government has drafted this letter in a manner that avoids revealing the contents of sealed materials and grand jury information. Accordingly, the Government does not seek permission to seal or redact this submission. Because the Defense Letter repeatedly references, and attaches as exhibits, materials that are sealed and that would jeopardize an ongoing grand jury investigation if filed publicly, the Government intends to submit a separate letter, under seal, proposing redactions to the Defense Letter and requesting that the attachments to the Defense Letter be filed under seal.

In particular, the Defense Letter seeks this Court's authorization to use materials relating to applications the Government made seeking the modification of certain protective orders in other judicial proceedings. By way of background, the Government sought such modifications to permit compliance with criminal grand jury subpoenas (the "Subpoenas"). Those Subpoenas were issued to a certain recipient (the "Recipient") after the Government opened a grand jury investigation into Jeffrey Epstein and his possible co-conspirators. For obvious reasons and in keeping with its standard practice, the Government did not notify the defendant or her counsel that it had issued the Subpoenas. In response to receiving the Subpoenas, the Recipient advised the Government that it believed that certain existing protective orders precluded full compliance. Accordingly, in or about February 2019, the Government applied *ex parte* and under seal to each relevant court to request modification of the respective protective orders to permit compliance with the Subpoenas. In or about April 2019, one court ("Court-1") granted the Government's application, and permitted that the Government share its order—and only that order, which itself prohibited further dissemination—to the Recipient.[2] Subsequently, the second court ("Court-2") denied the Government's application. Because the relevant grand jury investigation remains ongoing, both Court-1 and Court-2 have ordered that the filings regarding the Subpoenas remain under seal, except that both have expressly permitted the Government to produce those filings to the defendant as part of its discovery obligations in this criminal case. The Defense Letter now seeks to use those discovery materials in the Civil Cases.

At base, the defendant's application fundamentally misapprehends the nature and process of criminal proceedings, and it further reflects an inappropriate effort to blur the lines between the criminal discovery process and civil litigation. To be clear: the purpose of criminal discovery is to enable the defendant to defend herself in the criminal action, not to provide her with a trove of materials she can mine to her advantage in civil discovery. Her motion is nothing more than an effort to evade the directives of the protective order entered by this Court just three weeks ago. It should be denied for multiple reasons.

First, and as the defendant concedes, the protective order in this case expressly provides that any and all discovery material produced to the defendant by the Government, regardless of designation, "[s]hall be used by the Defendant or her Defense Counsel *solely* for purposes of the defense of this criminal action, and *not for any civil proceeding or any purpose other than the defense of this action*." Protective Order ¶¶ 1(a), 10(a), 14(a) (emphasis added) (Dkt. 36). Indeed, the defendant included that same provision, word-for-word, in her own proposed protective order. This was not a provision about which the defendant and the Government disagreed. *See* Defendant's Proposed Protective Order ¶ 1(a) (Dkt. 29-1). Yet less than a month later, the defendant is asking the Court to sanction her effort to utilize materials produced by the

[2] In the Defense Letter, the defendant argues that the Government "must have given a copy of the sealed order" to the Recipient, which defense counsel suggests is inconsistent with the Government's statement that it rarely provides discovery material to third parties. The defendant's suggestion is patently incorrect. The relevant order was signed in April 2019 and was issued for the purpose of being provided to the Recipient. Indeed the order contained an explicit provision that it could be transmitted to the Recipient. Accordingly, the order was conveyed to the Recipient well over a year before it became "discovery" in this criminal case.

Government in discovery in this criminal case, and to which the protective order unquestionably applies, to litigate her Civil Cases. There is no basis to modify the Protective Order here.

Second, there is good reason why both parties proposed, and the Court ordered, a protective order that prevents the defendant from using materials obtained through the process of criminal discovery in any of the many civil cases in which she is, or could become, a party. To allow the defendant to do so would permit the dissemination of a vast swath of materials, including those that are confidential due to witness privacy interests, personal identifying information of third parties, and relevance in ongoing grand jury investigations. Here, the Government was particularly concerned about the defendant's interests in blurring these lines because, among other reasons, her counsel in the criminal case are also her counsel in the Civil Cases. It would be grossly inappropriate for defense counsel to be permitted to sift through the criminal case discovery and cherry-pick materials they may believe could provide some advantage in their efforts to defend against accusations of abuse by victim plaintiffs, delay court-ordered disclosure of previously-sealed materials, or any other legal effort the defendant may be undertaking at any particular time. And yet that is what the defendant proposes.

Third, the specific documents at issue pertain to *ex parte* applications made as part of an ongoing grand jury investigation. Those documents were filed under seal and presently remain under seal because the relevant judicial officers have ordered that all filings regarding those matters, including the discovery materials referenced in the Defense Letter, remain sealed.[3] As the U.S. Attorney's Office for the Southern District of New York has stated publicly, the investigation into the conduct of the defendant in this case and other possible co-conspirators of Jeffrey Epstein remains active. The full scope and details of that investigation, however, have not been made public.[4] Accordingly, the materials the defendant seeks to file in the Civil Cases were produced under a "Confidential" designation. Any argument that such materials are not "confidential" would not only run contrary to the sealing orders entered by other courts, but also misapprehends the importance of maintaining the confidentiality of criminal investigations.[5] *See*,

[3] The only exceptions to those sealing orders are (1) as noted above, the permission from Court-1 to provide the April 2019 order alone to the Recipient, and, (2) pursuant to separate permissions the Government has obtained in connection with its discovery obligations, that the entirety of the record relating to the Subpoenas may be provided to the defendant as discovery in this case. The defendant's claim that the relevant materials were produced to the defendant in discovery without any application to the sealing courts, Def. Ltr. at 7, is incorrect.

[4] To the extent it would be useful to this Court for the Government to further elaborate on the nature of the ongoing grand jury investigation, the Government is prepared to file a supplemental letter specifically on that subject *ex parte* and under seal should the Court request such an explanation.

[5] Moreover, if counsel for the defendant in her Civil Cases believe that certain documents are improperly sealed, there is no impediment to counsel making sealed applications to Court-1 and Court-2, respectively, to unseal the relevant materials. Presumably they have not done so because

e.g., *United States v. Smith*, 985 F. Supp. 2d 506, 531 (S.D.N.Y. 2013) ("As a general proposition, courts have repeatedly recognized that materials, including even judicial documents which are presumptively accessible, can be kept from the public if their dissemination might 'adversely affect law enforcement interests.'") (*citing United States v. Amodeo*, 71 F.3d 1044, 1050)); *see also United States v. Park*, 619 F. Supp. 2d 89, 94 (S.D.N.Y. 2009) (holding that the need to "maintain the secrecy of the Government's investigation" outweighed the public's right of access to certain sentencing documents).

Fourth, defense counsel cites not a single case to support the argument that a criminal defendant should be permitted to use criminal discovery materials in her civil cases. Nor is the Government aware of any. Though precedent on this issue appears to be somewhat sparse—perhaps because few defendants attempt such a maneuver—*see United States v. Calderon*, 15 Cr. 025, 2017 WL 6453344, at *3 (D. Conn. Dec. 1, 2017) (discussing the relative lack of specific guidance in the context of an application to modify protective orders in criminal cases), *see also United States v. Morales*, 807 F.3d 717, 721 (5th Cir. 2015) ("[m]otions to modify protective orders in criminal cases appear to be infrequent"), decisions that do exist have rejected the kind of blurring of the line between criminal and civil proceedings that the defendant attempts here. *See Calderon*, 2017 WL 6453344, at 5-6 (denying a defendant's application for modification of a criminal protective order so he could use certain discovery materials in a FOIA suit); *United States v. DeNunzio*, --- F. Supp. 3d ---, 2020 WL 1495880, at *2-3 (D. Mass. March 27, 2020) (denying a defendant's motion to modify two protective orders in his criminal case for the purpose of pursuing claims in a civil action, even following the completion of trial).

Absent any authority upon which to rely, the defendant, in urging a contrary conclusion, makes various assertions and accusations, none of which warrant a different outcome. In particular, there is no merit or particular relevance to the defendant's argument that the Government secretly obtained a volume of materials relevant to its criminal case without telling the defendant. That is how grand jury subpoenas and investigations frequently work. Defense counsel's overheated rhetoric notwithstanding, there is simply nothing nefarious about the Government obtaining materials through grand jury subpoena process, let alone anything about the manner in which the Government obtained these materials that warrants the relief requested.

Certainly to the extent the defendant asserts that her adversary in civil litigation has engaged in some sort of improper conduct—assertions the Government by no means intends to suggest agreement with—such arguments even if credited would not be a proper basis to circumvent the plain language of the protective order (or the existing sealing orders) in this case. In any event, of the materials at issue, the only document the defendant's civil adversary has access to is the lone April 2019 order, meaning any purported imbalance between the parties in the Civil Cases at this stage is significantly overstated. And to the extent the defendant may seek to make similar accusations against the Government or challenge the manner in which the Government obtained the materials at issue—a challenge that itself would not justify the relief presently

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they recognize that the materials are appropriately sealed as relating to an ongoing grand jury investigation.

requested—the defendant can make such arguments, and the Government can and will vigorously oppose them, at the appropriate stage in this case.

Finally, to the extent the defendant contends that the relief requested is somehow necessary to her ability to bring issues to the attention of other courts, the Defense Letter completely fails to explain what legal argument she wishes to make in her Civil Cases based on the discovery materials she has identified or what relevance those materials have to the litigation of the Civil Cases. The fact that the Government issued grand jury subpoenas and obtained court authorization for compliance with one of those subpoenas has no conceivable relevance to disputed issues in the Civil Cases. To the extent the defendant argues that the requested relief is necessary to ensure that courts adjudicating the Civil Cases are aware of the existence of the documents at issue, the defendant identifies no specific reason why these materials are relevant to the issues pending in those cases, other than to falsely accuse the Recipient and the Government of some sort of malfeasance.[6]

In sum, the defendant's arguments in favor of her application offer no explanation of the relevant legal theory the materials would support, not to mention a compelling reason for this Court to permit an end-run around the protective order and permit the use of criminal discovery to litigate a civil case. Accordingly, the application in the Defense Letter should be denied.

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

By: /s
Maurene Comey / Alison Moe / Lara Pomerantz
Assistant United States Attorneys
Southern District of New York
Tel: (212) 637-2324

Cc: *All counsel of record*, via ECF

[6] If anything, the Defense Letter suggests that the defendant intends to use criminal discovery materials to attack *the Government* in the Civil Cases, attacks of no discernable relevance in those cases and made in a forum in which the Government is not a party and would have no opportunity to respond.

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

August 21, 2020

TO BE FILED PARTIALLY UNDER SEAL

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 to propose certain redactions to the defendant's letter of August 17, 2020 (the "Defense Letter") and to request that the exhibits attached to the Defense Letter be filed under seal during the pendency of an ongoing grand jury investigation. For the reasons set forth below, the Government respectfully requests that the Court permit the filing of the Defense Letter with the proposed redactions contained in Exhibit A hereto (which itself will be submitted to the Court under seal), and that the Court permit all of the exhibits to the Defense Letter to be filed under seal. The Government does not object to the public filing of the affidavit attached to the Defense Letter in unredacted form. Additionally, the Government will file a redacted version of this letter on the public docket, and separately will submit an unreduced version to the Court.

As an initial matter, the proposed redactions, and the request that the exhibits be filed under seal, are consistent with the Government's designation of the underlying material as "Confidential" within the meaning of the Protective Order in this case. *See* Protective Order ¶ 15 (Dkt. 36). Moreover, as detailed more fully in the Government's companion submission, that designation is appropriate given the nature of the documents at issue, all of which pertain to the Government's pending grand jury investigation.[1] That alone strongly weighs in favor of permitting the redactions and sealed filings at issue: Federal Rule of Criminal Procedure 6(e)(6) provides, in relevant part,

[1] To the extent it would be useful to this Court for the Government to further elaborate on the nature of the ongoing grand jury investigation, the Government is prepared to file a supplemental letter specifically on that subject *ex parte* and under seal should the Court request such an explanation.

that "[r]ecords, orders, and subpoenas relating to grand-jury proceedings *must be kept under seal* to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury."

Relatedly, the exhibits at issue—all of which pertain to several *ex parte* applications made by the Government—have previously been ordered to kept under seal by the relevant judicial officers, who have made the requisite findings to warrant sealing. The requested redactions and sealing would thus be necessary to ensure compliance with those sealing orders and is justified based upon them.[2] *Cf. Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 218 n.9 (1979) ("Since the 17th century, grand jury proceedings have been closed to the public; and records of such proceedings have been kept from the public eye. The rule of grand jury secrecy . . . is an integral part of our criminal justice system.").

Assuming without agreeing that these materials constitute "judicial documents" within the meaning of First Amendment right-of-access jurisprudence, such a determination would not be dispositive. The First Amendment presumptive right of access applies to civil and criminal proceedings and "protects the public against the government's arbitrary interference with access to important information." *N.Y. Civil Liberties Union v. N.Y.C. Transit Auth.* ("*NYCTA*"), 684 F.3d 286, 298 (2d Cir. 2012) (internal quotation marks omitted). The Circuit has applied two different approaches when deciding whether the First Amendment right applies to particular material. The "experience-and-logic" approach asks "both whether the documents have historically been open to the press and general public and whether public access plays a significant positive role in the functioning of the particular process in question." *Lugosch* v. *Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (internal quotation marks omitted). The second approach—employed when analyzing judicial documents related to judicial proceedings covered by the First Amendment right—asks whether the documents at issue "are derived from or are a necessary corollary of the capacity to attend the relevant proceedings." *Id.* (internal quotation marks and alteration omitted).

Even when it applies, the First Amendment right creates only a presumptive right of access, and the "presumption is rebuttable upon demonstration that suppression 'is essential to preserve higher values and is narrowly tailored to serve that interest.'" *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 96 (2d Cir. 2004) (quoting *Press-Enterprise Co. v. Superior Court of Cal., Riverside Cnty.*, 464 U.S. 501, 510(1984)) (internal citation omitted). "What offends the First Amendment is the attempt to [exclude the public] without sufficient justification," *NYCTA*, 684 F.3d at 296, not the simple act of exclusion itself. Thus, the presumptive right of access may be overcome by "specific, on-the-record findings that sealing is necessary to preserve higher values and only if the sealing order is narrowly tailored to achieve that aim." *Lugosch*, 435 F.3d at 124.

[2] The only exceptions to those sealing orders are the permission contained in a certain order issued in April 2019, namely that the order itself may be provided to the recipient of a subpoena, and, pursuant to separate permissions the Government has obtained in connection with its discovery obligations, that the entirety of the relevant filings may be provided to the defendant as discovery in this criminal case.

Here, even assuming the materials at issue constitute judicial documents, any presumption in favor of access is overcome because of the nature of the documents themselves, namely materials related to a grand jury investigation.

As described above, the grand jury investigation is active and ongoing, and resulted in new charges being brought just last month in this case. [redacted]

[redacted]

In sum, the Government respectfully submits that the exhibits to the Defense Letter, which consist entirely of filings that have been ordered sealed by other judicial officers, should similarly be filed under seal in this case while the grand jury investigation remains ongoing. For the same reasons, the Government proposes redacting any portions of the Defense Letter that [redacted].

Accordingly, the Government respectfully requests that the Court permit the redactions to the Defense Letter proposed in Exhibit A hereto and that both the unredacted Defense Letter and the exhibits thereto remain under seal until further order of the Court. Additionally, because the instant letter discusses the Government's ongoing investigation and references [redacted] the Government also respectfully requests that it be permitted to file a redacted version of this letter on the public docket and that the unredacted version of this letter as well as Exhibit A to this letter be filed under seal.

Finally, the Government respectfully proposes that the Court set a date approximately 180 days from now, or as soon thereafter as the Court believes would be appropriate, for the Government to update the Court on its position regarding sealing in connection with this matter.

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

By: /s
Maurene Comey / Alison Moe / Lara Pomerantz
Assistant United States Attorneys
Southern District of New York
Tel: (212) 637-2324

Cc: *All counsel of record*, by email

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

–v–

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

MEMORANDUM
OPINION AND ORDER

ALISON J. NATHAN, District Judge:

On August 17, 2020, Defendant Ghislaine Maxwell filed a sealed letter motion seeking an Order modifying the protective order in this case.[1] Specifically, she sought a Court order allowing her to file under seal in certain civil cases ("Civil Cases") materials ("Documents") that she received in discovery from the Government in this case. She also sought permission to

[1] This Order will not refer to any redacted or otherwise confidential information, and as a result it will not be sealed. The Court will adopt the redactions to Defendant's August 17, 2020 letter motion that the Government proposed on August 21, 2020, and it will enter that version into the public docket. The Court's decision to adopt the Government's proposed redactions is guided by the three-part test articulated by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). Under this test, the Court must: (i) determine whether the documents in question are "judicial documents;" (ii) assess the weight of the common law presumption of access to the materials; and (iii) balance competing considerations against the presumption of access. *Id.* at 119-20. "Such countervailing factors include but are not limited to 'the danger of impairing law enforcement or judicial efficiency' and 'the privacy interests of those resisting disclosure.'" *Id.* at 120 (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir.1995) ("*Amodeo II*")). The Government's proposed redactions satisfy this test. First, the Court finds that the defendant's letter motion is "relevant to the performance of the judicial function and useful in the judicial process," thereby qualifying as a "judicial document" for purposes of the first element of the *Lugosch* test. *United States v. Amodeo* ("*Amodeo I*"), 44 F.3d 141, 145 (2d Cir. 1995). Second, the Court assumes that the common law presumption of access attaches, thereby satisfying the second element. But in balancing competing considerations against the presumption of access, the Court finds that the arguments the Government has put forth—including, most notably, the threat that public disclosure of the redacted sections would interfere with an ongoing grand jury investigation—favor the Government's proposed narrowly tailored redactions.

In light of this ruling, the parties are hereby ORDERED to meet and confer with respect to proposed redactions to the Defendant's reply letter, dated August 24, 2020 and the Defendant's August 24, 2020 letter addressing her proposed redactions to the Defendant's August 17, 2020 letter motion. The parties are further ORDERED to submit their proposed redactions no later than September 4, 2020; if the parties cannot agree on their proposed redactions, they shall submit a joint letter to the Court explaining the nature of their dispute.

reference, but not file, other discovery material that the Government produced in this case. For the reasons that follow, Defendant's requests are DENIED.

Under Federal Rule of Criminal Procedure 16(d)(1), a Court may enter a protective order only after it finds that good cause exists. Within this framework, the Federal Rules of Criminal Procedure leave it to the discretion of the Court to determine whether modification of an existing protective order is warranted.[2] To make that decision, the Court takes into account all relevant factors, including the parties' reliance on the protective order and whether the moving party has sufficiently substantiated a request to deviate from the *status quo* in the instant matter.

On July 30, 2020, this Court entered a protective order in this case, having determined that good cause existed. Dkt. No. 36. The parties agreed that a protective order was warranted. *See* Dkt. No. 35 at 1 ("The parties have met and conferred, resolving nearly all the issues relating to the proposed protective order."). The Defendant's Proposed Protective Order included a provision that stated that all discovery produced by the Government "[s]hall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action." Dkt. No. 29, Ex. A ¶ 1(a). That language was included in the Court's July 30, 2020 protective order. *See* Dkt. No. 36 ¶¶ 1(a), 10(a), 14(a). Shortly thereafter, the Government began to produce discovery.

Upon receipt of some of the discovery, the Defendant filed the instant request, which seeks modification of the protective order in order to use documents produced in the criminal

[2] In the civil context, there is a "strong presumption against the modification of a protective order." *In re Teligent, Inc.,* 640 F.3d 53, 59 (2d Cir. 2011) (citation omitted). Courts in the Second Circuit have applied the standard for modification of protective orders in the civil context to the criminal context. *See, e.g.*, *United States v. Calderon*, No. 3:15-CR-25 (JCH), 2017 WL 6453344, at *2 (D. Conn. Dec. 1, 2017) (applying the civil standard for the modification of a protective order in a criminal case); *United States v. Kerik*, No. 07-CR-1027 (LAP), 2014 WL 12710346 at *1 (S.D.N.Y. July 23, 2014) (same). *See also United States v. Morales*, 807 F.3d 717, 723 (5th Cir. 2015) (applying the standard for "good cause" in the civil context when evaluating whether to modify a protective order entered in a criminal case); *United States v. Wecht*, 484 F.3d 194, 211 (3rd Cir. 2007) (same).

case in other civil proceedings. She bases her request on the premise that disclosure of the Documents to the relevant judicial officers is allegedly necessary to ensure the fair adjudication of issues being litigated in those civil matters. But after fourteen single-spaced pages of heated rhetoric, the Defendant proffers no more than vague, speculative, and conclusory assertions as to why that is the case. She provides no coherent explanation of what argument she intends to make before those courts that requires the presentation of the materials received in discovery in this criminal matter under the existing terms of the protective order in this case. And she furnishes no substantive explanation regarding the relevance of the Documents to decisions to be made in those matters, let alone any explanation of why modifying the protective order in order to allow such disclosure is necessary to ensure the fair adjudication of those matters. In sum, the arguments the Defendant presents to the Court plainly fail to establish good cause. The Defendant's request is DENIED on this basis.

Indeed, good cause for the requested modification of the protective order is further lacking because, as far as this Court can discern, the *facts* she is interested in conveying to the judicial decisionmakers in the Civil Cases are already publicly available, including in the Government's docketed letter on this issue. *See* Dkt. No. 46. In the opening paragraph of her reply letter dated August 24, 2020, the Defendant states that she is essentially seeking to disclose under seal to certain judicial officers the following factual information:

1. Grand jury subpoenas were issued to an entity ("Recipient") after the Government opened a grand jury investigation into Jeffrey Epstein and his possible co-conspirators;
2. The Recipient concluded that it could not turn over materials responsive to the grand jury subpoena absent a modification of the civil protective orders in the civil cases;

3. In February 2019, the Government, *ex parte* and under seal, sought modification of those civil protective orders so as to permit compliance with the criminal grand jury subpoenas;
4. In April 2019, one court ("Court-1") permitted the modification and, subsequently, another court ("Court-2") did not;
5. That as a result of the modification of the civil protective order by Court-1, the Recipient turned over to the Government certain materials that had been covered by the protective order; and
6. That the Defendant learned of this information (sealed by other courts) as a result of Rule 16 discovery in this criminal matter.

With the exception of identifying the relevant judicial decision makers and specific civil matters, all of the information listed above is available in the public record, including in the letter filed on the public docket by the Government on this issue. *See* Dkt. No. 46. Although this Court remains in the dark as to why this information will be relevant to those courts, so that those courts can make their own determination, to the extent it would otherwise be prohibited by the protective order in this matter, the Court hereby permits the defendant to provide to the relevant courts under seal the above information, including the information identifying the relevant judicial decision makers and civil matters.

In addition, the Government has indicated that "there is no impediment to counsel making sealed applications to Court-1 and Court-2, respectively, to unseal the relevant materials." Dkt. No. 46 at 3 n.5. In her reply, the Defendant asserts that she is amenable to such a solution if the Court agrees with the Government that doing so would not contravene the protective order in this case. To the extent it would otherwise be prohibited by the protective

order in this matter, the Defendant may make unsealing applications to those Courts if she wishes.

SO ORDERED.

Dated: September 2, 2020
New York, New York

ALISON J. NATHAN
United States District Judge

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August 17, 2020

VIA EMAIL

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

Re: Request to Modify Protective Order (UNDER SEAL)[1]
United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Dear Judge Nathan,

Defendant Ghislaine Maxwell, pursuant to paragraph 18 of this Court's Protective Order (Doc. # 36), requests that the Court enter an Order allowing her to refer to and file under seal in [redacted] (the "Other Matters"), certain discovery materials produced by the government on August 5, 2020. She also seeks to refer to (but not file) discovery materials produced by the government on August 13, 2020, specifically [redacted].[2]

Disclosure to the judicial officers in the Other Matters is necessary for fair determination of important issues [redacted]

[1] Ms. Maxwell seeks leave to file this Letter Motion under seal because it relates and refers to discovery materials deemed Confidential under the terms of the Protective Order in this case.

[2] [redacted]

[redacted].[3] The items to be referred to (and not filed) are confidential; accordingly, referring to them under seal in the Other Matters will not prejudice the government.

Relevant Facts and Procedural History

[redacted]

[3] The Materials to be filed are attached, under seal, as exhibits [redacted]. Although marked by the government as "Confidential," the Materials are not "Confidential" as that term has been defined by the Second Circuit. They consist of [redacted] The Second Circuit has characterized these types of documents as "judicial documents" with a presumptive right of public access. *See Brown v. Maxwell*, 929 F.3d 41, 47 (2d Cir. 2019). Ms. Maxwell objected to the government's Confidential designation, under paragraph 9 of the Protective Order, and requested that the government withdraw the designation. The Court does not need to decide the issue of whether the Material is confidential at this time given that Ms. Maxwell seeks only to provide the Material to judicial officers under seal as information necessary to fairly decide pending issues in those cases.

[4] [redacted]

[5] [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

The Material

The government apparently contacted [redacted] at some time before February 2019 [redacted]. Based on some discussion with [redacted], the government served [redacted] with a subpoena to produce [redacted]. Ms. Maxwell was not served with

any subpoena. [redacted]

In or about February 28, 2019 the government first applied to [redacted] for relief. [redacted] During these *ex parte* proceedings, the government made numerous unchallenged factual assertions. To Ms. Maxwell's knowledge, no one disclosed the pendency of these applications to [redacted]. Certainly, no one -- not the government, any court, or [redacted] -- disclosed to Ms. Maxwell [redacted].

[redacted]

The indictment [redacted]
On July 2, 2020, [redacted], the government arrested Ms. Maxwell. On July 8, the government filed a superseding indictment alleging that Ms. Maxwell "assisted, facilitated, and contributed" to Epstein's abuse of minors. [redacted] the indictment alleges that in 2016 Ms. Maxwell made "efforts to conceal her conduct" by "repeatedly provid[ing] false and perjurious statements" in deposition testimony. Superseding Indictment, Doc. # 17 at 29 ¶ 8.

[redacted]. On the two applications referenced above [redacted] the two SDNY courts rendered a split decision. [redacted] granted the *ex*

[6] The first batch of discovery was provided by the government to NY counsel on August 5, 2020 in the late afternoon on a hard disk. Due to the time upload and securely transfer files, undersigned counsel for Ms. Maxwell (also counsel for her in the *Giuffre* case) only received these materials at 11:38 a.m. on Friday, August 7, 2020.

parte application. [redacted] denied the application. [redacted].[7]

Counsel for Ms. Maxwell then learned, [redacted]

The pressing issue that necessitates the filing of this request concerns [redacted] These issues, in turn, impact her rights as the accused in this matter, constitutionally presumed innocent unless and until the government proves her guilt beyond all reasonable doubt.

The Protective Order in this case

The Protective Order in this case prohibits the use of the discovery materials or confidential-designated materials "for any civil proceeding or any purpose other than the defense of this action" absent mutual agreement in writing between the government and defense counsel or if "modified by further order of the Court." Doc. # 36 at ¶¶ 1(a), 10(a), 18. Ms. Maxwell agreed to that limitation after assurances by the government, consistent with their representation to this Court, that "the Government rarely *provides* any third party, including a witness, with any material they did not already possess," and therefore "concerns defense counsel raises about future use in civil litigation are not likely to occur." Letter of Alex Rossmiller at 6 (Doc. # 33) (July 28, 2020). This Court relied on that representation in its ruling that government witnesses should not be limited in their use of materials gained from the government in any related civil litigation. Memorandum Op'n & Order at 3 (July 30, 2020). Yet as described above, the government must have given a copy of the sealed order to [redacted]

Paragraph 18 of the Protective Order permits modification by the Court. Further, any concerns that the government may raise concerning their on-going grand jury investigation will be obviated by submission of these materials under seal in the other matters.

The reasons this Court should grant the request

[redacted].

[7] [redacted]

There are at least three compelling reasons to modify the Protective Order. First, [redacted]

The partial secrecy surrounding the Material has also fundamentally undermined the fairness of the adversarial process. Although the grand jury subpoena and government investigation were known to [redacted]

[redacted] "The rule does not impose any obligation of secrecy on witnesses." Fed. R. Crim. P. 6, Advisory Committee Note to Subdivision 6(e)2. [redacted] Too many questions remain unanswered including exactly what was said between the government and [redacted], when was it said, and precisely what was turned over. [redacted] Without the ability to use the Material in the very limited fashion proposed Ms. Maxwell she is unfairly disadvantaged [redacted] Moreover, instead of candidly revealing the fact of the subpoena [redacted]

Second, [redacted]

[redacted].

Further, and as this Court knows, ample Second Circuit authority supports staying a civil case pending the resolution of a related criminal case. *See SEC v. Blaszczak*, No. 17-CV-3919 (AJN), 2018 WL 301091, at *1 (S.D.N.Y. Jan. 3, 2018) (granting motion to stay civil case and holding that "[a] district court may stay civil proceedings when related criminal proceedings are imminent or pending, and it will sometimes be prudential to do so" (quoting *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 98 (2d Cir. 2012))). Among other things, the stay vindicates the Fifth Amendment and guards against witnesses learning information in the civil case and then "conforming" their testimony in the criminal case to what was disclosed in the civil case. This concern is all the more real when [redacted]

Ms. Maxwell further anticipates the very immediate need to disclose the Materials to [redacted]

Notably, the Material at issue is not accuser-related or sensitive in any regard. These *ex parte* pleadings, hearings, and rulings are already known to [redacted]. These materials, absent sealing, would enjoy a presumptive right of public access as judicial documents. Given that the Material has been ***disclosed in this case*** by the government under the terms of this Court's Order, and without any application to the sealing courts, the government has conceded that this Court has the authority to authorize use of the Material under the terms of this Court's Protective Order. And, the government has previously agreed that the appropriate forum to consider issues related to the civil Protective Order is in the civil litigation, positing the opinion "that neither it nor this Court is well-positioned to, or should, become the arbiter of what is appropriate or permissible in civil cases." Doc. # 33 at 7. What Ms. Maxwell asks is that she be allowed to disclose, under seal, the Material so that [redacted].

The Protective Order in this case [redacted]

The Material, as part of the court files in the United States District Court for the Southern District of New York, [redacted]

[redacted]).[8]

[redacted].

Conclusion

Ms. Maxwell requests that this Court modify the Protective Order to allow her to refer to and file under seal in [redacted]he Material at issue in this letter motion.

Respectfully Submitted,

Jeffrey S. Pagliuca

CC: Counsel of Record (via Email)

[8] [redacted]

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August 24, 2020

VIA EMAIL

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

Re: Proposed Redactions to Request to Modify Protective Order (Under Seal)
United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Dear Judge Nathan,

In accordance with this Court's Order of August 18, 2020 (Doc. 44), Ms. Maxwell hereby respectfully submits under seal her proposed redactions to her Request to Modify Protective Order ("Request"), filed under seal on August 17, 2020. Ms. Maxwell also has filed her Reply under seal and contemporaneously submits her proposed redactions to that pleading.[1]

Ms. Maxwell has no opposition to keeping under seal, and redacting from her Request and Reply, the contents, description and discussion of the sealed materials themselves; because the government has marked them Confidential, the Protective Order requires as much. *See* Doc. 36, ¶ 15.

The government's proposed redactions, however, go further and propose to redact [redacted]. The government would have this Court redact [redacted] on the premise that it would "risk jeopardizing the government's investigation."

[redacted]

[1] To the extent this Court believes this letter also should be filed publicly, counsel also has indicated her proposed redactions to this letter.

[redacted]

Moreover, the government has made repeated, highly public statements, including at the press conference following Ms. Maxwell's indictment,[2] in the press conference following Mr. Epstein's indictment,[3] in a press conference convened at the doorstep of Mr. Epstein's former New York mansion,[4] and in other publicly-released statements[5] that its investigation into associates of Mr. Epstein is ongoing and active.

[redacted]. The process to evaluate whether a judicial document should remain under seal is clear. Once a determination is made that the materials are judicial documents the Court is required to determine whether any countervailing interests outweigh the presumptive right to public access. *Brown v. Maxwell*, 929 F.3d 41, 49-50 (2d Cir. 2019).

Frankly, Ms. Maxwell does not believe that the government has established a countervailing interest compelling enough to justify continued sealing of the documents. [redacted] It is also likely that these same documents will be the subject of future motion practice in this Court, [redacted]

However, Ms. Maxwell has no interest in additional pretrial publicity related to any of these documents and submits that protecting her right to a fair trial is the countervailing interest that, at this point, requires her proposed redactions and the continued sealing of the materials with the exception of her limited request to file the materials under seal [redacted]

---

[2] "These charges to be announced today, are the latest result of our investigation into Epstein, and the people around him who facilitated his abuse of minor victims. That investigation remains ongoing." (https://www rev.com/blog/transcripts/announcement-transcript-of-charges-against-ghislaine-maxwell-in-new-york-jeffrey-epstein-associate-arrested).

[3] "This in no way is over, OK. There's going to be more investigative steps they're going to take place and the FBI with the U.S. attorney here is going to continue to investigate." http://transcripts.cnn.com/TRANSCRIPTS/1907/08/ath.01 html).

[4] Sarah Nathan and Kate Sheey, "Prince Andrew refuses to cooperate with feds in Jeffrey Epstein probe," NY Post (Jan. 27, 2020) (https://nypost.com/2020/01/27/prince-andrew-refuses-to-cooperate-with-feds-in-jeffrey-epstein-probe/).

[5] Alan Feuer, "Prince Andrew and U.S> Prosecutor in Nasty Dispute Over Epstein Case," NY Times (June 8, 2020) (https://www nytimes.com/2020/06/08/nyregion/jeffrey-epstein-prince-andrew html).

Respectfully Submitted,

Jeffrey S. Pagliuca

CC: Counsel of Record (via Email)

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August 24, 2020

VIA EMAIL

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

Re: Reply in Support of Request to Modify Protective Order (Under Seal)[1]
United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Dear Judge Nathan,

Defendant Ghislaine Maxwell filed a simple request: that she be permitted to disclose *under seal* to [redacted] (the "Civil Litigation") the fact that her adversary [redacted] already handed over [redacted], to the U.S. Attorney's Office pursuant to a subpoena [redacted]

The government proposes to keep [redacted] in the dark about the fact and method of the disclosure. They claim the civil litigation is "unrelated," that issuance of the subpoena was "standard practice," and that disclosure will jeopardize an ongoing criminal investigation and "permit dissemination of a vast swath of materials." Each of the government's arguments lack merit.

The Civil Litigation [redacted]:
First, the government claims the civil action is [redacted] Resp. at 1. The assertion is frivolous. [redacted]

[1] Ms. Maxwell has filed a letter motion which seeks leave to file this reply under seal, while providing the unredacted version to the government and the Court. This reply describes and discusses sealed materials and materials subject to the Protective Order in this case. Ms. Maxwell also simultaneously files under separate cover her proposed redactions to her Request to Modify Protective Order (Aug. 17, 2020), and this Reply, in accordance with the Court's Order of August 18, 2020 (Doc. 44).

[redacted]

[redacted]. The government's *ad hominem* suggestion that Ms. Maxwell has "cherry-pick[ed] materials" to seek an "advantage in their efforts to defend against accusations of abuse" or "delay court-ordered disclosure of previously sealed materials" reveals a fundamental (or feigned) lack of understanding [redacted]. It also begs the question, to be fleshed out at a later time, [redacted]

Ms. Maxwell simply seeks to alert the judicial officers in the related Civil Litigation to facts about which her adversary is already aware.

Issuance of the Subpoenas Not "Standard Practice":

Second, the government tries to normalize, without citation to authority, its conduct as "standard practice." Resp. at 2. To the contrary, the controlling case in this Circuit, *Martindell v. Int'l Telephone & Telegraph Corp.*, 594 F.2d 291, 293 (2d Cir. 1979), mandates a wholly different procedure: the use of a non-*ex parte* subpoena with an opportunity for the aggrieved party to move to quash. Similar cases in this district demonstrate the "non-standard" nature of the government's conduct regarding these subpoenas. For example, Judge Koeltl observed when considering whether to release a single deposition transcript to the government: "the Second Circuit has made clear that the Government may not use its 'awesome' investigative powers to seek modification of a protective order merely to compare the fruits of the plaintiff's discovery in a civil action with the results of a prosecutorial investigation in a criminal action." *Botha v. Don King Prods., Inc.*, No. 97 CIV. 7587 (JGK), 1998 WL 88745, at *3 (S.D.N.Y. Feb. 27, 1998) (citing *Minpeco S.A. v. Conticommodity Servs., Inc.*, 832 F.2d 739, 743 (2d Cir. 1987) and *Martindell*, 594 F.2d at 297). [redacted]

[redacted] *see also Palmieri v. State of New York*, 779 F.2d 861 (2d Cir. 1987); *Abbott Laboratories v. Adelphia Supply USA*, Case 2015-cv-5826 (CBA) (MDG), 2016 WL 11613256 (S.D.N.Y. Nov. 22, 2016) ("In the Second Circuit, there is a presumption in favor of enforcing protective orders against grand jury subpoenas."); *United States v. Kerik*, 07 CR 1027, 2014 WL 12710346 (S.D.N.Y. July 23, 2014). It seems that a majority of courts in this district have rejected the claimed "standard practice" arguments made by the Government [redacted]. A notable difference is that the other applications were not conducted *ex parte*. [redacted] Ms. Maxwell is not asking this Court to decide that question today.

But Ms. Maxwell is seeking [redacted]

The Government Does Not Explain How Any "Secret" Investigation Will be Compromised. Third, the government claims that the materials at issue are "Confidential" because the "full scope and details" of their very-public proclamations of an ongoing criminal investigation "have not been made public." Resp. at 3. This argument too is nonsensical: the sealed materials that Ms. Maxwell seeks to file, *under seal*, [redacted] Certainly the subpoena recipient, otherwise known as counsel for the adverse party to the Civil Litigation, knows the two things that Ms. Maxwell seeks to file *under seal* in

that matter: [redacted].[2]

The government does not explain, because they cannot, how it will harm an ongoing criminal investigation to reveal the sealed materials under seal to two arbiters: [redacted] Clearly those judicial officers are fully capable of maintaining files under seal and confidences. Nor is there any support for the argument that this limited request will "permit dissemination of a vast swath of materials." Resp. at 3. The slippery slope contention is belied by the limited nature of Ms. Maxwell's request. The sealed materials are a discrete set of judicial documents, not a "vast swath of materials," and Ms. Maxwell seeks to file them under seal for those Courts to use in their determinations. Hyperbole aside, the request is appropriately limited.

Further, the government's suggestion that "there is no impediment to counsel making sealed applications to Court-1 and Court-2, respectively, to unseal the relevant materials" is, at best, baffling. Resp. at 3 n.5. Such a "sealed application" in furtherance of her Civil Litigation would be "using" the materials for the civil case, exactly the conduct proscribed by the Protective Order here. If the Court disagrees, Ms. Maxwell is more than happy to make such sealed applications to those judicial officers. The government does not explain its thinking, nor did the government suggest this course of action during the conferral process.

<u>The Sealed Materials Are Important to</u> [redacted]
Fourth, the government decries the sealed materials' lack of relevance to [redacted]

[redacted]

[2] Ms. Maxwell strenuously opposes the government's suggestion that it "further elaborate on the nature of the ongoing grand jury investigation" in a supplemental *ex parte* and sealed pleading. This Court is overseeing the criminal case pertaining to Ms. Maxwell and any *ex parte* pleading concerning this case to this judicial officer is inappropriate. *See* Standard 3-3.3 Relationship with Courts, Defense Counsel and Others, "Criminal Justice Standards for the Prosecution Function," American Bar Ass'n (4th ed. 2017) ("A prosecutor should not engage in unauthorized *ex parte* discussions with, or submission of material to, a judge relating to a particular matter which is, or is likely to be, before the judge.").

[redacted]

Protective Orders May Be Modified As Circumstances Change

Finally, the government suggests in a myriad of ways without directly arguing that this Protective Order cannot be modified, that Ms. Maxwell somehow waived her ability to seek modification by agreeing to a Protective Order before she knew what was contained in the criminal discovery, or that there is no precedent for such a modification. These suggestions are disingenuous. Of course, the Government ignores that the Protective Order itself provides that it may be modified "by further order of the Court." *Id*, ¶ 18(b).

There is no precedence for this case. That is true because the Second Circuit has outlined a process for the government to seek civil materials subject to protective orders for use in grand jury investigations, a process the government circumvented. It also is true because typically, the government is the party to intervene in civil cases and seek a stay where materials the government has marked "Confidential" may be disclosed publicly or where the government contends the rules of criminal discovery will be circumvented. Finally, there is no other case that defense counsel has located where [redacted]

That Ms. Maxwell did not know what was in the sealed materials before she signed the Protective Order, or proposed a draft, is self-evident. That a Court can modify a protective order at any time is likewise well-established. Fed. R. Crim. P. 16(d)(1) authorizes the Court to regulate discovery through protective orders and modification of those orders. *See Smith Kline Beecham Corp. v. Synthon Pharmaceuticals, Ltd*., 210 F.R.D. 163, 166 (M.D.N.C. 2002) ("[c]ourts have the inherent power to modify protective orders, including protective orders arising from a stipulation by the parties"); *see also United States v. Gurney*, 558 F.2d 1202, 1211 n.15 (5th Cir. 1977) (trial court's decisions as to which documents "will be placed in the public domain, and which are entitled to privacy and confidentiality" are discretionary and "form an integral part of trial management"); *United States v. Wecht*, 484 F.3d 194, 211 (3d Cir. 2007), *as amended* (July 2, 2007) ("it would have been proper for the District Court to unseal the records pursuant to its general discretionary powers"); *Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 532 & 535 (1st Cir. 1993).

"The standard of review for a request to vacate or modify a protective order depends on the nature of the documents in question. There is a presumptive right of public access to judicial

documents, that is, documents that are 'relevant to the performance of the judicial function and useful in the judicial process.'" *Kerik*, 2014 WL 12710346, at *1 (S.D.N.Y. July 23, 2014), (*quoting United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995)).

The Materials that Ms. Maxwell seeks to disclose (to judicial officers under seal) are, without question, judicial documents. [redacted] And, at a minimum, Ms. Maxwell's opponent in the Civil Litigation knows both that the Government obtained an *ex parte* order to subpoena the information and what was produced. Accordingly, the argument that somehow grand jury secrecy will be compromised by disclosure, under seal to judicial officers reviewing the very material at issue, is absurd. Ms. Maxwell has demonstrated good cause for her very limited request to present a discrete set of sealed materials under seal to [redacted] The government has not articulated a cogent reason for that information to be kept from the other judicial officers.

Sincerely,

Jeffrey S. Pagliuca

CC: Counsel of Record (via ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

Plaintiff,

v.

GHISLAINE MAXWELL,

Defendant.

----------X

20-CR-330 (AJN)

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Ghislaine Maxwell, Defendant in the above-captioned case, hereby appeals to the United States Court of Appeals for the Second Circuit from the district court's September 2, 2020, Memorandum Opinion and Order denying her motion to modify the protective order. *Pichler v. UNITE*, 585 F.3d 741, 746 n.6 (3d Cir. 2009) ("We have jurisdiction under the collateral order doctrine to review the denial of the motion to modify the Protective Order and the denial of the motion to reconsider."); *Minpeco S.A. v. Conticommodity Servs., Inc.*, 832 F.2d 739, 742 (2d Cir. 1987) (denial of motion to modify protective order is immediately appealable under the collateral order doctrine) (citing *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 545–47 (1949)); *see also Brown v. Maxwell*, 929 F.3d 41, 44 (2d Cir. 2019) (appeal by intervenors challenging denial of motions to modify protective order and unseal).

Dated: September 3, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 3, 2020, I filed this *Notice of Appeal* with the Clerk of Court by mail pursuant to Section 17 of the CM/ ECF Rules and served all parties of record by email.

/s/ Nicole Simmons

20-3061

United States Court of Appeals
for the Second Circuit

UNITED STATES OF AMERICA

Plaintiff-Appellee,

—against—

GHISLAINE MAXWELL,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, 20-CR-330 (AJN)

Appendix Volume 2
(Filed Under Seal)

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Table of Contents

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): 20-3061 Caption [use short title] United States v. Maxwell

Motion for: leave to file under seal and to be excused from filing redacted version of Appendix Volume 2

Set forth below precise, complete statement of relief sought:

Seeking: (1) leave to file under seal; (a) the unredacted version of the opening brief; (b) Appendix Volume 2; and (c) the unredacted version of Ms. Maxwell's response to the government's opposition to the motion to consolidate; and (2) leave not to file a redacted version of Appendix Volume 2 on ECF because it contains only confidential/sealed material

MOVING PARTY: Ghislaine Maxwell
☐ Plaintiff ☑ Defendant
☑ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY: United States of America

MOVING ATTORNEY: Adam Mueller

OPPOSING ATTORNEY: Maurene Comey

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

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Assistant U.S. Attorney, SDNY
1 St. Andrew's Plaza, New York, NY 10007
212-637-2324 Maurene.Comey@usdoj.gov

Court-Judge/Agency appealed from: Judge Nathan, S.D.N.Y.

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 INJUNCTIONS PENDING APPEAL:

Has 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: October 13, 2020

Signature of Moving Attorney: s/ Adam Mueller **Date:** 9/24/2020 Service by: ☑ CM/ECF ☑ Other [Attach proof of service]

20-3061

United States Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

GHISLAINE MAXWELL,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, 20-CR-330 (AJN)

Unopposed Motion for Leave to File under Seal and to be Excused from Filing Redacted Version of Appendix Volume 2

Defendant-Appellant Ghislaine Maxwell, through her attorneys Haddon, Morgan and Foreman, P.C., moves unopposed under Federal Rule of Appellate Procedure 25(a)(5) and Second Circuit Local Rule 25.1(j)(2) for leave to make three filings under seal: (1) the unredacted version of her opening brief (filed today); (2) Appendix Volume 2 (filed today); and (3) the unredacted version of her response to the government's opposition to the motion to consolidate (filed

yesterday). Ms. Maxwell also requests leave to be excused from publicly filing a redacted version of Appendix Volume 2 on ECF. As grounds for this request, Ms. Maxwell states:

This appeal addresses an order by Judge Nathan declining to modify a criminal protective order. A related case, *Giuffre v. Maxwell*, No. 20-2413, addresses an order by Judge Preska unsealing certain deposition material. Ms. Maxwell has filed a motion to consolidate both appeals. Oral argument in both appeals is scheduled for October 13.

1) The unredacted opening brief references material currently under seal and/or shielded by the criminal protective order.

2) Appendix Volume 2 includes all the relevant district court material that is sealed/confidential under the criminal protective.

3) The unredacted version of Ms. Maxwell's response to the government's opposition to the motion to consolidate makes brief reference to confidential/sealed information.

To comply with the criminal protective order, Ms. Maxwell can file unredacted versions of this material *only* under seal with this Court.

In compliance with the criminal protective order, Ms. Maxwell will publicly file on ECF a *redacted* copy of her opening brief. She already filed a

redacted copy of her response to the government's opposition to the motion to consolidate.

Appendix Volume 2, however, cannot be redacted since the entirety of the material therein is sealed/confidential.

Therefore, Ms. Maxwell seeks leave to file under seal (1) the unredacted version of her opening brief (filed today); (2) Appendix Volume 2 (filed today); and (3) the unredacted version of her response to the government's opposition to the motion to consolidate (filed yesterday). Ms. Maxwell also requests leave to be excused from publicly filing a redacted version of Appendix Volume 2 on ECF.

Counsel for Ms. Maxwell conferred with the government regarding this motion. The government does not oppose this motion.

September 24, 2020.

Respectfully submitted,

s/ Adam Mueller

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Counsel for Defendant-Appellant Ghislaine Maxwell

Certificate of Compliance

Under Federal Rule of Appellate Procedure 32(g) and Rule 27(d)(2)(A), the undersigned counsel hereby certifies that this motion complies with the type-volume limitation of the Federal Rules of Appellate Procedure. As measured by the word processing system used to prepare this motion, there are 367 words in this motion.

s/ Adam Mueller

Certificate of Service

I certify that on September 24, 2020, I filed this *Unopposed Motion for Leave to File under Seal and to be Excused from Filing Redacted Version of Appendix Volume 2* with the Court via CM/ECF, which will send notification of the filing to all counsel of record. I also certify that I emailed a copy of this motion to all counsel of record.

s/ Nicole Simmons

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 28th day of September, two thousand twenty.

United States of America,

Appellee,

v.

Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

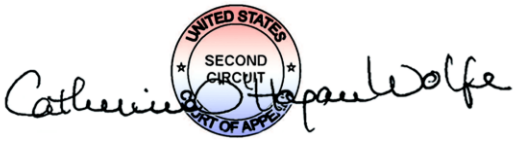
ORDER

Docket No. 20-3061

Appellant moves for leave to file three documents under seal; the unredacted version of the opening brief, volume 2 of the appendix, and the reply in support of the motion to consolidate appeals. Appellant also requests to be excused from publicly filing a redacted version of volume 2 of the appendix.

IT IS HEREBY ORDERED that the motion is GRANTED, upon consent and absent objection.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court



20-3061

United States Court of Appeals for
the Second Circuit

UNITED STATES OF AMERICA

Plaintiff-Appellee,

—against—

GHISLAINE MAXWELL,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, 20-CR-330 (AJN)

Ms. Maxwell's Response to the Government's Motion to Dismiss Appeal

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Background

This appeal challenges the district court's order denying Ms. Maxwell's motion to modify the protective order. Ms. Maxwell's limited request sought permission from Judge Nathan to share certain information with another Article III judge.

The government contends this Court lacks jurisdiction to review Judge Nathan's order. But if the government is right, then Judge Nathan's order is unreviewable. The collateral order doctrine is not so rigid.

While an interlocutory appeal is the exception and not the rule, all the conditions required to satisfy the collateral order doctrine exist here. First, Judge Nathan's order conclusively determined the disputed question (whether Ms. Maxwell could share relevant and material information with another Article III judge). Second, Judge Nathan's order resolved an important issue completely separate from the merits of the action (whether it is proper for one Article III judge, at the request of the government, to keep secret from a co-equal judge information relevant and material to the second judge's role in deciding a matter before her). And third, Judge Nathan's order is effectively unreviewable on appeal from a final judgment (by the time of a final judgment, Judge Preska's order unsealing the deposition material will have gone into effect and Judge Preska will have ruled on

other unsealing requests and Ms. Maxwell's intended motion to stay the unsealing process, all without the benefit of knowing information relevant to those decisions).

Finally, the exercise of jurisdiction here adheres to the purposes of the collateral order doctrine. The validity of the order can be assessed now without waiting until the trial is complete, and nothing about this appeal delays the criminal case.

Alternatively, for the reasons given below, this Court can exercise mandamus jurisdiction to correct the district court's clear abuse of discretion.

Argument

I. This Court has jurisdiction under the collateral order doctrine.

This Court has jurisdiction under the collateral order doctrine to review a district court decision declining to modify the protective order. *Pichler v. UNITE*, 585 F.3d 741, 746 n.6 (3d Cir. 2009) ("We have jurisdiction under the collateral order doctrine to review the denial of the motion to modify the Protective Order and the denial of the motion to reconsider."); *Minpeco S.A. v. Conticommodity Servs., Inc.*, 832 F.2d 739, 742 (2d Cir. 1987) (denial of motion to modify protective order is immediately appealable under the collateral order doctrine) (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545–47 (1949)); *see also Brown v.*

Maxwell, 929 F.3d 41, 44 (2d Cir. 2019) (appeal by intervenors challenging denial of motions to modify protective order and unseal).

Under the collateral order doctrine, an interlocutory order is immediately appealable if it (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment. *Will v. Hallock*, 546 U.S. 345, 349 (2006) (citing *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993)).

The district court's order declining to modify the protective order meets all three requirements: the court conclusively decided not to modify the protective order, App. 99–103; the propriety of modifying the protective order is completely separate from the merits of the government's criminal allegations against Ms. Maxwell; and appellate review of the order will be impossible following final judgment because a post-judgment appeal will be moot since, by that time, Judge Preska's decision unsealing the deposition material in *Giuffre v. Maxwell*, Nos. 20-2413 (2d Cir.)/15-cv-7433 (S.D.N.Y.) will have gone into effect.

That is the very point of this appeal, after all: to share with Judge Preska the critical new information Ms. Maxwell has learned before it's too late. All

Ms. Maxwell asks is for permission to share, under seal, the relevant facts with another Article III judge.

The government argues there is no jurisdiction for this Court to consider this appeal. Doc. 37. Quoting *Midland Asphalt Corp. v. United States*, the government says the collateral order doctrine must be interpreted "with the utmost strictness in criminal cases." 489 U.S. 794, 799 (1989) (quoting *Flanagan v. United States*, 465 U.S. 259, 265 (1984)). Doc. 37 at 8. According to the government, in criminal cases the doctrine applies only to orders denying a bond, orders denying a motion to dismiss on double jeopardy ground, orders denying a motion to dismiss under the Speech and Debate Clause, and orders permitting the forced administration of antipsychotic drugs to render a defendant competent for trial. Doc. 37 at 9. The government is wrong.

To be sure, this appeal does not concern one of the four types of orders identified by the government. But that doesn't mean the appeal isn't proper under the collateral order doctrine, particularly when there is no serious argument that it satisfies each of the doctrine's three requirements: Judge Nathan's order (1) conclusively determined the disputed question, (2) it resolved an important issue completely separate from the merits of the action, and (3) it is effectively unreviewable on appeal from a final judgment. *See Will*, 546 U.S. at 349.

In *Flanagan v. United States*, the Supreme Court ruled that an order disqualifying criminal counsel pretrial was not immediately appealable under the collateral order doctrine. 465 U.S. 259, 266 (1984). The Court explained that unlike an order denying a motion to reduce bail, which "becomes moot if review awaits conviction and sentence," an order disqualifying counsel is fully remediable posttrial. *Id.* Moreover, a motion to disqualify counsel is "not independent of the issues to be tried" because its "validity cannot be adequately reviewed until trial is complete." *Id.* at 268. Finally, unlike an appeal of a bail decision, "an appeal of a disqualification order interrupts the trial," and any delay in a criminal case "exacts a presumptively prohibitive price." *Id.* at 269.

Unlike the disqualification order at issue in *Flanagan*, the appeal of Judge Nathan's order is like the appeal of an order denying a motion to reduce bail. First, this appeal will "become[] moot if review awaits conviction and sentence." *See id.* at 266. Unless Ms. Maxwell can share with Judge Preska what she learned from Judge Nathan, Judge Preska's order unsealing the deposition material will go into effect without Judge Preska's getting the chance to reconsider her decision in light of the new information. And once the deposition material is unsealed, the cat is irretrievably out of the bag. That is precisely why this Court stayed Judge Preska's order pending appeal. *Giuffre v. Maxwell*, No. 20-2413 (2d Cir.), Doc. 30.

Second, the appeal of Judge Nathan's order is entirely "independent of the issues to be tried" in the criminal case and its "validity can[] be adequately reviewed" now. *See Flanagan*, 465 U.S. at 268. There is nothing about Ms. Maxwell's request to share information with Judge Preska that must wait until the criminal trial is over. To the contrary, waiting until the criminal trial is over will moot the issue.

Third, this appeal does not and will not delay the criminal case, which is proceeding apace despite the proceedings before this Court. *See id.* at 264 (explaining that interlocutory appeals in criminal cases are generally disfavored because of the "societal interest in providing a speedy trial").[1]

The government's contentions to the contrary rely on two easily distinguishable cases and misunderstand Ms. Maxwell's arguments on the merits. Start with the two cases on which the government relies. Doc. 37, p 11 (citing *United States v. Caparros*, 800 F.2d 23, 24 (2d Cir. 1986); *United States v. Pappas*, 94 F.3d 795, 798 (2d Cir. 1996)). According to the government, *Caparros* and *Pappas* hold that "protective orders regulating the use of documents exchanged by

[1] That the criminal case is proceeding on course despite this appeal confirms that this appeal involves an issue completely separate from the merits of the criminal action.

the parties during a criminal case are not subject to interlocutory appeal." Doc. 37, p 11. That is not correct.

In *Caparros*, this Court dismissed an appeal of a protective order issued in a criminal case preventing the defendant from making public certain documents allegedly concerning public safety. 800 F.2d at 23–24. According to the defendant, the prohibition on public disclosure was an unconstitutional prior restraint of speech. *Id.* at 24. This Court dismissed the appeal because it did not satisfy the three conditions precedent to interlocutory review, in particular the requirement that the issue must be effectively unreviewable on appeal from a final judgment. *Id.* at 24–26. Said the Court:

> [The issue] will not become moot on conviction and sentence or on acquittal because the order will have continuing prohibitive effect thereafter and the purported right to publish the documents, to the extent it now exists, will also continue. This is not a situation where an order, to be reviewed at all, must be reviewed before the proceedings terminate. Nor is there any allegation of grave harm to appellant if the order is not immediately reviewed.

Id. at 26 (internal citations omitted).

This case is not like *Caparros*. For one thing, Ms. Maxwell does not seek to make anything public. To the contrary, she seeks to provide documents to *judicial officers—under seal*—to ensure that all the Article III decisionmakers are on the same page about the relevant facts and that Judge Preska does not continue to

remain in the dark. For another thing, this appeal *will* become moot if review awaits a final judgment in the criminal case, even if the protective order continues to have prohibitive effect following the criminal trial. That's because what Ms. Maxwell seeks is permission to share information with Judge Preska *now*, information that should be part of Judge Preska's decisionmaking in the unsealing process and any decision whether to stay that process. And unless Ms. Maxwell can share the information now, the request will become moot because there is no way to "re-seal" a document Judge Preska prematurely unseals without the benefit of knowing all the facts.

Pappas also doesn't help the government. In *Pappas*, this Court dismissed in part an appeal challenging a protective order prohibiting the defendant from disclosing classified information he obtained from the government as part of discovery. 94 F.3d at 797. At the same time, the Court *accepted* jurisdiction over the portion of the appeal that challenged the protective order's bar on disclosure of information the defendant acquired from the government before the litigation. *Id.* at 798. This Court distinguished the differing results based on the breadth of the protective order's ban. *Id.* As this Court said, "to the extent that the order prohibits Pappas from disclosure of information he acquired from the Government prior to the litigation, the order is not a typical protective order regulating

discovery documents and should be appealable because of the breadth of its restraint." *Id.* (citing *United States v. Salameh*, 992 F.2d 445, 446–47 (2d Cir. 1993)).

Beyond standing for the proposition that interlocutory appeals are the exception and not the rule (which Ms. Maxwell doesn't dispute), *Pappas* has nothing to add to the analysis here. Even strictly construing the three requirements for collateral order jurisdiction, *see Will*, 546 U.S. at 349, the order here meets the test.

The balance of the government's argument against jurisdiction misunderstands Ms. Maxwell's position. For example, according to the government, "it is not entirely clear that all of the issues Maxwell seeks to raise in this appeal have been finally resolved." Doc. 37, p 17. Ms. Maxwell's argument, says the government, is "primarily focused on attacking the legitimacy of the Government's methods of obtaining evidence that it intends to use to prosecute the criminal case through the Subpoenas to" the recipient. Doc. 37, p 17. Based on this understanding, the government claims that Ms. Maxwell "seeks to have this Court reach the merits of her arguments on that issue in the context of the *civil* appeal, and before they have been properly litigated before and adjudicated by the

District Court in the *criminal* case." Doc. 37, p 17 (emphasis in original). That is not so.

In the civil appeal, Ms. Maxwell is not asking this Court to rule on the propriety of the government's conduct in circumventing *Martindell*. Rather, Ms. Maxwell's argument in the civil appeal is that, unless this Court reverses Judge Preska's order unsealing the deposition material, Ms. Maxwell may never be able to challenge before Judge Nathan the government's conduct in obtaining her depositions. As Ms. Maxwell said in her opening brief in the appeal of Judge Preska's unsealing order:

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

Giuffre v. Maxwell, No. 20-2413, ECF Dkt. 69, p 33. Only by mischaracterizing Ms. Maxwell's argument can the government contend that she "seeks to have this Court reach the merits of her arguments on [the *Martindell*] issue in the context of the *civil* appeal, and before they have been properly litigated before and adjudicated by the District Court in the *criminal* case." *See* Doc. 37, p 17. Ms. Maxwell's point

is that, unless the unsealing order is reversed, she likely won't be able to "properly litigate" the *Martindell* issue at all.

Nor is *this* appeal the proper forum for deciding whether the government improperly circumvented *Martindell*. All Ms. Maxwell seeks here is an order allowing her to share with Judge Preska information that is essential to her decision to unseal the deposition material and to rule on a motion to stay, information Judge Preska did not know at the time and information the government insists should be kept from her. And that issue—whether it is proper for one Article III judge, at the request of the government, to keep secret from a co-equal judge information relevant and material to the second judge's role in deciding a matter before her—is properly reviewed on an interlocutory basis because it is "an important issue completely separate from the merits of the action." *Will*, 546 U.S. at 349.

II. Alternatively, this Court can exercise mandamus jurisdiction.

Assuming Ms. Maxwell cannot appeal Judge Nathan's order under the collateral order doctrine, this Court should exercise mandamus jurisdiction and issue a writ of mandamus directing the district court to modify the protective order as requested by Ms. Maxwell. *E.g.*, *Wilk v. Am. Med. Ass'n*, 635 F.2d 1295, 1298 (7th Cir. 1980) (declining to decide whether the collateral order applied and instead issuing a writ of mandamus to vacate a district court decision declining to modify

protective order), *superseded by rule on other grounds as recognized in Bond v. Utreras*, 585 F.3d 1061, 1068 n.4 (7th Cir. 2009); *see Pappas*, 94 F.3d at 798 (recognizing that protective orders in criminal cases "[i]n rare instances . . . might raise issues available for review via a petition for writ of mandamus").

A writ of mandamus issued under the All Writs Act "confine[s] the court against which mandamus is sought to a lawful exercise of its prescribed jurisdiction." *In re City of N.Y.*, 607 F.3d 923, 932 (2d Cir. 2010) (internal quotations omitted). A writ is properly issued when "exceptional circumstances amount[] to a . . . clear abuse of discretion." *Id.* (internal quotations omitted).

Three conditions must exist for this Court to issue a writ of mandamus: (1) the petitioner must demonstrate the right to issuance of the writ is clear and indisputable; (2) she must have no other adequate means to attain the relief desired; and (3) the issuing court must be satisfied the writ is appropriate. *In re Roman Catholic Diocese of Albany, N.Y.*, 745 F.3d 30, 35 (2d Cir. 2014). All three conditions exist here.

First, as explained in her opening brief, Judge Nathan clearly abused her discretion in declining to modify the protective order. Doc. 60, pp 23–33.

Second, Ms. Maxwell has no other adequate means to attain the relief necessary because her request for Judge Preska to reevaluate her unsealing order

with the benefit of knowing what everyone else knows will become moot once the deposition material is unsealed (as this Court already recognized by staying the unsealing order pending appeal).

Finally, it is appropriate for this Court to issue a writ of mandamus because, as explained in Ms. Maxwell's motion to consolidate, the judges in the Southern District of New York have reached inconsistent decisions to prejudice of Ms. Maxwell. A writ of mandamus is appropriate because only this Court can guarantee that all the judges below are on the same page.

Conclusion

For these reasons, as well as those given in the opening brief, Doc. 60, pp 10–22, this Court should deny the government's motion to dismiss the appeal.

September 28, 2020.

Respectfully submitted,

s/ Adam Mueller

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Counsel for Defendant-Appellant Ghislaine Maxwell

Certificate of Compliance

Under Federal Rule of Appellate Procedure 32(g) and Rule 27(d)(2)(A), the undersigned counsel hereby certifies that this response complies with the type-volume limitation of the Federal Rules of Appellate Procedure. As measured by the word processing system used to prepare this response, there are 2,842 words in this response.

s/ Adam Mueller

Certificate of Service

I certify that on September 28, 2020, I filed this *Ms. Maxwell's Response to the Government's Motion to Dismiss Appeal* with the Court via CM/ECF, which will send notification of the filing to all counsel of record. I also certify that I emailed a copy of this motion to all counsel of record.

s/ Nicole Simmons

NOTICE OF APPEARANCE FOR SUBSTITUTE, ADDITIONAL, OR AMICUS COUNSEL

Short Title: United States v. Maxwell Docket No.: 20-3061

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

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Telephone: (212) 637-2476 Fax: (212) 637-2605

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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 December 9, 2019 OR

☐ I applied for admission on _____.

Signature of Counsel: /s

Type or Print Name: Karl Metzner

20-3061

To Be Argued By:
LARA POMERANTZ

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 20-3061

UNITED STATES OF AMERICA,

Appellee,

—v.—

GHISLAINE MAXWELL, also known as Sealed Defendant 1,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 20-3061

UNITED STATES OF AMERICA,

Appellee,

—v.—

GHISLAINE MAXWELL, also known as Sealed Defendant 1,

Defendant-Appellant.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Ghislaine Maxwell appeals from an order entered on September 2, 2020, in the United States District Court for the Southern District of New York, by the Honorable Alison J. Nathan, United States District Judge, denying her motion to modify a protective order entered by Judge Nathan.

Superseding Indictment S1 20 Cr. 330 (AJN) (the "Indictment") was filed on July 8, 2020 charging Maxwell in six counts. The Indictment alleges that between in or about 1994 and in or about 1997, Maxwell assisted, facilitated, and contributed to Jeffrey Epstein's sexual exploitation and abuse of multiple minor

girls by, among other things, helping Epstein to recruit, groom, and ultimately abuse minor victims. The Indictment further alleges that in or about 2016, Maxwell attempted to cover up her crimes by lying under oath about her role in Epstein's scheme.

On July 30, 2020, upon the Government's application, Judge Nathan entered a protective order governing the parties' disclosure of information produced to Maxwell by the Government in discovery in the criminal case (the "Protective Order"). The Protective Order, among other things, prohibits the use of criminal discovery materials in civil litigation. Three weeks later, Maxwell moved to modify the Protective Order to allow Maxwell to use confidential criminal discovery materials, which were produced to Maxwell by the Government, in filings Maxwell intended to submit in separate civil litigation.

Judge Nathan denied Maxwell's motion on September 2, 2020, holding, among other things, that Maxwell had failed to establish good cause to modify the Protective Order and failed to coherently explain how the criminal discovery materials related to any argument Maxwell intended to make in the civil litigation.

Maxwell filed a notice of appeal on September 4, 2020.

Statement of Facts

A. The Indictment

On June 29, 2020, Indictment 20 Cr. 330 (AJN) was filed under seal in the Southern District of New York,

charging Maxwell in six counts. (A. 4).[1] On July 2, 2020, Maxwell was arrested and the original indictment was unsealed. (A. 4). On July 8, 2020, Superseding Indictment S1 20 Cr. 330 (AJN) was filed in the Southern District of New York. (A. 6). Count One of the Indictment charges Maxwell with conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charges Maxwell with enticing a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 2422 and 2. Count Three charges Maxwell with conspiracy to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371. Count Four charges Maxwell with transporting minors to participate in illegal sex acts, in violation of 18 U.S.C. § 2423 and 2. Counts Five and Six charge Maxwell with perjury, in violation of 18 U.S.C. § 1623. The matter remains pending in the pretrial phase before Judge Nathan. Maxwell's pretrial motions are due on December 21, 2020, and trial has been scheduled to commence on July 12, 2021.

B. The Protective Order

On July 30, 2020, upon the Government's application, Judge Nathan entered the Protective Order governing the parties' disclosure of information produced

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[1] "2d Cir. Dkt." refers to an entry in this Court's docket for this case; "Br." refers to Maxwell's brief on appeal; and "A." refers to the appendix filed with Maxwell's brief. Unless otherwise noted, all case quotations omit citations, internal quotations, and previous alterations.

in discovery in the criminal case. (A. 75-86). The Protective Order expressly provides that any and all discovery material produced to Maxwell by the Government, regardless of designation, "[s]hall be used by the Defendant or her Defense Counsel solely for purposes of the defense of this criminal action, and not for any civil proceeding or any purpose other than the defense of this action." (Protective Order ¶¶ 1(a), 10(a), 14(a)). The Protective Order further provides that any discovery material produced to Maxwell by the Government that is marked "confidential" may not be filed publicly or excerpted within any public filing. (Protective Order ¶ 15). Maxwell's criminal defense counsel consented to the foregoing provisions of the Protective Order. (*See* A. 40, 44-55).

C. The District Court Litigation

Despite having agreed to the prohibition on using the discovery materials in civil cases, on August 17, 2020, Maxwell asked Judge Nathan to modify the Protective Order to allow her to do exactly that. (A. 124-31). In particular, Maxwell's motion sought authorization to use materials relating to applications the Government previously made in 2019 seeking the modification of certain protective orders in other judicial proceedings.

On August 21, 2020, the Government filed an opposition to Maxwell's motion to modify the Protective Order. (A. 90-94). In its opposition, the Government explained the factual background regarding the confidential criminal discovery materials at issue. In par-

ticular, the Government explained that those discovery materials related to the Government's requests to modify certain protective orders in civil cases to permit compliance with grand jury subpoenas (the "Subpoenas"). (A. 91). Those Subpoenas were issued to a certain recipient (the "Recipient") in connection with a grand jury investigation into Jeffrey Epstein and his possible co-conspirators. (A. 91). To maintain the integrity of the grand jury investigation and in accordance with both Federal Rule of Criminal Procedure 6(e) and its standard practice, the Government did not notify Maxwell or her counsel of the Subpoenas. (A. 91). In response to receiving the Subpoenas, the Recipient advised the Government that it believed that certain existing protective orders precluded full compliance. (A. 91). Accordingly, in or about February 2019, the Government applied *ex parte* and under seal to each relevant court to request modification of the respective protective orders to permit compliance with the Subpoenas. (A. 91). In or about April 2019, one court ("Court-1") granted the Government's application, and permitted the Government to share Court-1's order—and only that order, which itself prohibited further dissemination—to the Recipient.[2] (A. 91). Subse-

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[2] The Government notes that this entire litigation took place months before Judge Preska was assigned to handle *Giuffre v. Maxwell* on July 9, 2019.

quently, the second court ("Court-2") denied the Government's application.[3] (A. 91). Because the relevant grand jury investigation remains ongoing, both Court-1 and Court-2 have ordered that the filings regarding the Subpoenas remain under seal, except that both have expressly permitted the Government to produce those filings to Maxwell as part of its discovery obligations in this criminal case. (A. 91).

After providing that factual background, the Government argued that Maxwell's motion should be denied for failing to show good cause to modify the Protective Order for several reasons. First, Maxwell had consented to the portions of the Protective Order that prohibit use of criminal discovery materials produced by the Government in any civil litigation. (A. 91-92). Second, Maxwell had cited no authority to support the argument that a criminal defendant should be permitted to use criminal discovery in civil cases. (A. 93). Third, Maxwell utterly failed to explain how the criminal discovery materials at issue supported any legal argument she wished to make in civil litigation. (A. 94). The Government also noted that to the extent Maxwell sought to challenge the process by which the Government sought compliance with the Subpoenas and obtained certain materials that it intended to use in prosecuting its criminal case, she would have a full

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[3] The Government notes that Court-1 granted the Government's application first, and then the Government provided a copy of Court-1's decision to Court-2. Court-2 then denied the Government's application. (A. 207-37).

opportunity to do so in her pretrial motions in the criminal case before Judge Nathan. (A. 93-94).

D. Judge Nathan's Order

On September 2, 2020, Judge Nathan issued the Order denying Maxwell's motion. (A. 99-103). In that Order, Judge Nathan noted that despite "fourteen-single spaced pages of heated rhetoric," Maxwell had offered "no more than vague, speculative, and conclusory assertions" regarding why the criminal discovery materials were necessary to fair adjudication of her civil cases. (A. 101). Judge Nathan concluded that absent any "coherent explanation" of how the criminal discovery materials related to any argument Maxwell intended to make in civil litigation, Maxwell had "plainly" failed to establish good cause to modify the Protective Order. (A. 101). Further, Judge Nathan noted that the basic facts Maxwell sought to introduce in civil litigation were already made public through the Government's letter in opposition to her motion. (A. 101-02). Accordingly, even though Judge Nathan "remain[ed] in the dark as to why this information will be relevant" to the courts adjudicating the civil cases, Judge Nathan expressly permitted Maxwell to inform the tribunals overseeing her civil cases, under seal, of the basic factual background regarding the confidential criminal discovery materials at issue. (A. 101-02).

E. Maxwell's Appeal of the Order

On September 4, 2020, Maxwell filed a notice of appeal from the Order. (A. 121-23). On September 10, 2020, Maxwell filed a motion to consolidate this appeal

with the appeal currently pending in *Giuffre v. Maxwell*, No. 20-2413. (2d Cir. Dkt. 17). The Government is not a party to the appeal in *Giuffre v. Maxwell*, which concerns an order issued in a civil case unsealing materials that were previously filed under seal. On September 16, 2020, the Government filed a motion to dismiss Maxwell's appeal for lack of jurisdiction and requested that this Court deny Maxwell's motion for consolidation (the "Motion to Dismiss"). (2d Cir. Dkt. 37).

ARGUMENT

POINT I

This Court Lacks Jurisdiction To Hear This Appeal

As explained in the Government's Motion to Dismiss, the final judgment rule precludes jurisdiction over Maxwell's appeal of the Order. *See* 28 U.S.C. § 1291. Maxwell fails to explain how the Order falls within the "small class" of decisions that constitute immediately appealable collateral orders. *See Van Cauwenberghe v. Biard*, 486 U.S. 517, 522 (1988). Accordingly, this Court should dismiss Maxwell's appeal for lack of appellate jurisdiction.

A. Applicable Law

Title 28, United States Code, Section 1291 expressly limits the jurisdiction of Courts of Appeals to "final decisions of the district courts." 28 U.S.C. § 1291. "This final judgment rule requires that a party must ordinarily raise all claims of error in a single appeal

following final judgment on the merits. In a criminal case[,] the rule prohibits appellate review until conviction and imposition of sentence." *Flanagan v. United States*, 465 U.S. 259, 263 (1984); *accord United States v. Aliotta*, 199 F.3d 78, 81 (2d Cir. 1999). As the Supreme Court has "long held," the "policy of Congress embodied in this statute is inimical to piecemeal appellate review of trial court decisions which do not terminate the litigation, and . . . this policy is at its strongest in the field of criminal law." *United States v. Hollywood Motor Car Co.*, 458 U.S. 263, 265 (1982); *see also Flanagan*, 465 U.S. at 270 (noting "overriding policies against interlocutory review in criminal cases" and that "exceptions to the final judgment rule in criminal cases are rare"); *United States v. Culbertson*, 598 F.3d 40, 46 (2d Cir. 2010) (recognizing that "undue litigiousness and leaden-footed administration of justice, the common consequences of piecemeal appellate review, are particularly damaging to the conduct of criminal cases").

There is a limited exception to this rule that permits immediate appeal from certain collateral orders. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467-68 (1978) (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949)). To fall within the "small class" of decisions that constitute immediately appealable collateral orders, the decision must "(1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment." *Van Cauwenberghe*, 486 U.S. at 522.

The Supreme Court has made clear that the collateral order exception should be "interpreted . . . with the utmost strictness in criminal cases." *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 799 (1989); *accord United States v. Robinson*, 473 F.3d 487, 490 (2d Cir. 2007). In over 70 years since *Cohen* was decided, despite "numerous opportunities" to expand the doctrine, *Midland Asphalt*, 489 U.S. at 799, the Supreme Court has identified only four types of pretrial orders in criminal cases as satisfying the collateral-order doctrine: an order denying a bond, *see Stack v. Boyle*, 342 U.S. 1 (1951); an order denying a motion to dismiss on Double Jeopardy grounds, *see Abney v. United States*, 431 U.S. 651 (1977); an order denying a motion to dismiss under the Speech or Debate Clause, *see Helstoski v. Meanor*, 442 U.S. 500 (1979); and an order permitting the forced administration of antipsychotic drugs to render a defendant competent for trial, *see Sell v. United States*, 539 U.S. 166 (2003). In contrast, the circumstances in which the Supreme Court has "refused to permit interlocutory appeals" in criminal cases have been "far more numerous." *Midland Asphalt*, 489 U.S. at 799.

As to the third *Van Cauwenberghe* criterion, "[a]n order is effectively unreviewable where the order at issue involves an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial." *United States v. Punn*, 737 F.3d 1, 5 (2d Cir. 2013). "The justification for immediate appeal must . . . be sufficiently strong to overcome the usual benefits of deferring appeal until litigation concludes." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 107 (2009). A ruling that is burdensome to a party

"in ways that are only imperfectly reparable by appellate reversal of a final district court judgment is not sufficient." *Punn*, 737 F.3d at 5. "Instead, the decisive consideration is whether delaying review until the entry of final judgment would imperil a substantial public interest or some particular value of a high order." *Mohawk Indus.*, 558 U.S. at 107; *see also Kensington Int'l Ltd. v. Republic of Congo*, 461 F.3d 238, 241 (2d Cir. 2006). In a criminal case, the availability of post-judgment relief through reversal or vacatur of conviction, if warranted, will generally be sufficient to protect whatever right a defendant claims was abridged by the district court's pretrial decision. *See, e.g.*, *Punn*, 737 F.3d at 14 ("Punn's claim can be adequately vindicated upon appeal from a final judgment. . . . [I]f Punn's arguments continue to fail before the district court, purportedly ill-gotten evidence or its fruits are admitted at his trial, and conviction results, appellate review will be available at that point[,] . . . [and the Court] may order a new trial without the use of the ill-gotten evidence, or whatever additional remedies are necessary to ensure that Punn's legitimate interests are fully preserved."); *United States v. Hitchcock*, 992 F.2d 236, 239 (9th Cir. 1993) (district court's refusal to seal documents not immediately appealable because "[r]eversal after trial, if it is warranted, will adequately protect . . . interest[s]" asserted by defendants).

When applying the collateral order doctrine, the Supreme Court has "generally denied review of pretrial discovery orders." *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 377 (1981). This Court likewise

has consistently ruled that protective orders regulating the use of documents exchanged by the parties during a criminal case are not subject to interlocutory appeal. *See, e.g.*, *United States v. Caparros*, 800 F.2d 23, 24 (2d Cir. 1986) ("We hold that this collateral protective order is not appealable under 28 U.S.C. § 1291 . . . ."); *United States v. Pappas*, 94 F.3d 795, 798 (2d Cir. 1996) ("To the extent that the [protective] order imposed restrictions on the parties' disclosure of materials exchanged in the course of pending litigation, it is not subject to appeal."); *see also H.L. Hayden Co. of N.Y. v. Siemens Medical Sys., Inc.*, 797 F.2d 85, 90 (2d Cir. 1986) ("The district court's denial of modification [of a protective order] does not fall within the 'collateral order' doctrine of *Cohen*."). Because "a litigant does not have an unrestrained right to disseminate information that has been obtained through pretrial discovery," such protective orders do not amount to an impermissible prior restraint under the First Amendment. *Caparros*, 800 F.2d at 25. Even where a litigant raises a colorable argument that a protective order violates a litigant's right to release documents outside of criminal litigation, "adjudication of any such right can await final judgment on the underlying charges" because the "purported right at issue is not related to any right not to stand trial." *Id.* at 26.

B. Discussion

Maxwell's jurisdictional arguments run afoul of this Circuit's precedent and offer no justification for including the Order in the "small class" of decisions that constitute immediately appealable collateral orders. *See Van Cauwenberghe*, 486 U.S. at 522. In her

opening brief, Maxwell concedes that her appeal of the Order does not concern one of the four types of pretrial orders that the Supreme Court has identified as satisfying the collateral order doctrine in criminal cases, but she fails to offer a basis for expanding those categories to embrace her claim here. (Br. 12.) The rights implicated by the Order—namely, the use of pretrial discovery materials—do not justify expanding the limited collateral order exception, which is "interpreted . . . with the utmost strictness." *Midland Asphalt,* 489 U.S. at 799.

Maxwell relies principally on three cases in seeking to overcome decades of Supreme Court precedent narrowly construing the exception to the requirement that appeals in criminal cases be from the final judgment of conviction. As discussed in the Government's Motion to Dismiss, the cases Maxwell cites do not support the existence of an exception here. All three cases involved appeals by intervenors—not parties—seeking to modify protective orders in civil cases. *Pichler v. UNITE*, 585 F.3d 741, 745-746 (3d Cir. 2009) (third party intervenor foundation appealing order denying motion to modify protective order in civil litigation to allow third party access to discovery materials); *Minpeco S.A. v. Conticommodity Servs., Inc.*, 832 F.2d 739, 741 (2d Cir. 1987) (Commodity Futures Trading Commission ("CFTC") acting as third party intervenor appealing order denying motion to modify protective order in civil litigation to allow CFTC to obtain discovery exchanged by parties to civil case permissible because "[t]he entire controversy between the CFTC and the defendants in this case was disposed of by the district court's denial of the government's motion to modify the

protective order"); *Brown v. Maxwell*, 929 F.3d 41, 46 (2d Cir. 2019) (third party intervenors, including members of the press, appealing order denying motion to modify protective order in civil litigation to allow third parties access to sealed filings, after parties to the litigation settled). Thus, appellate jurisdiction in those cases was founded on the principle that when intervenors seek access to sealed records, "orders denying access are final *as to the intervenors*." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 117 (2d Cir. 2006) (emphasis added). Once the courts in those cases denied the intervenors' motions to modify protective orders, there was nothing left for those intervenors to litigate. Here, by contrast, Judge Nathan's Order did not end the entire litigation as to Maxwell. To the contrary, Maxwell is scheduled to file pretrial motions in December 2020 and to proceed to trial in July 2021.

When considering interlocutory appeals from rulings on protective orders governing a criminal defendant's use of discovery materials, by contrast, this Court has concluded it lacks jurisdiction. *See Caparros*, 800 F.2d at 24; *Pappas*, 94 F.3d at 798. Maxwell cites no case in which this Court has found jurisdiction over an interlocutory appeal of an order regulating the use of materials a criminal defendant received during litigation, and her efforts to distinguish *Pappas* and *Caparros* fall short. *Pappas* concluded that where a protective order "prohibits . . . disclosure of information [a defendant] acquired from the Government *prior to* the litigation, the order is not a typical protective order regulating discovery documents and should be appealable because of the breadth of its restraint." *Pappas*, 94 F.3d at 798 (emphasis added). But that is not the

type of protective order at issue here. To the contrary, the Protective Order in this case expressly provides that its provisions "shall not be construed as preventing disclosure of any information, with the exception of victim or witness identifying information, that is publicly available or obtained by the Defendant or her Defense Counsel form a source other than the Government." (A. 84-85). Instead, the Protective Order "imposed restrictions on the parties' disclosure of materials exchanged in the course of pending litigation" and, like the similar provision in the *Pappas* protective order, is therefore "not subject to appeal" prior to entry of final judgment. *Pappas*, 94 F.3d at 798.

Caparros is similarly analogous. That case declined to find jurisdiction over a similar order for several reasons, including because "[t]he purported right at issue is not related to any right to stand trial." *Caparros*, 800 F.2d at 26. The Court also concluded that the protective order in that case would be reviewable on appeal after final judgment and emphasized that the defendant would not suffer any "grave harm . . . if the order is not immediately reviewed." *Id.* So too here. Maxwell has not articulated any serious injury she will suffer if this Court dismisses her appeal. The only theoretical harm might be prejudicial pretrial publicity arising from the unsealing of filings in a civil case. Should any prejudicial publicity arise, though, Maxwell will be fully able to raise that issue on appeal after the entry of final judgment in her criminal case. *See, e.g.*, *United States v. Sabhnani*, 599 F.3d 215, 232-34 (2d Cir. 2010) (evaluating on post-judgment appeal whether publicity biased the venire); *United States v. Elfgeeh*, 515 F.3d 100, 128-31 (2d Cir. 2008) (evaluating on post-

judgment appeal whether publicity biased trial jurors); *United States v. Nelson*, 277 F.3d 164, 201-04, 213 (2d Cir. 2002) (vacating conviction where district court improperly refused to excuse potential juror who admitted bias based upon knowledge of defendant's previous acquittal). Accordingly, like the protective order in *Caparros*, the Order here will still be reviewable on appeal after entry of final judgment.

In evaluating Maxwell's appeal, the Court should "not engage in an individualized jurisdictional inquiry," but instead focus "on the entire category to which a claim belongs." *Mohawk*, 558 U.S. at 107. The Order declining to modify the Protective Order is not subject to interlocutory appeal as "[p]rotective orders that only regulate materials exchanged between the parties incident to litigation, like most discovery orders, are neither final orders, appealable under 28 U.S.C. § 1291, nor injunctions, appealable under 28 U.S.C. § 1292(a)(1)." *Pappas*, 94 F.3d at 798.

Maxwell nevertheless asks this Court to engage in an individualized jurisdictional inquiry to justify her immediate appeal. Contrary to Maxwell's claims, the Order does not meet the third criterion of the standard for identifying immediately appealable collateral orders, which requires that the order being appealed from be "effectively unreviewable on appeal from a final judgment." *Van Cauwenberghe*, 486 U.S. at 522. She likens her claim here to an appeal of an order denying a motion to reduce bail, arguing that her appeal "will become moot if review awaits conviction and sentence." (Br. 13 (quotation omitted)). But that is not so. In an order denying a motion to reduce bail, the

"issue is finally resolved and is independent of the issues to be tried, and the order becomes moot if review awaits conviction and sentence." *Flanagan*, 465 U.S. at 266. Unlike a request for bail reduction, however, an order denying modification of a protective order does not become moot upon conviction and sentence.

"The standard for review set forth in *Flanagan* is not easily met," and Maxwell has not done so here. *Caparros*, 800 F.2d at 25. To the extent Maxwell still wishes to use materials she obtained through criminal discovery for other purposes after entry of final judgment in the criminal case, she can seek authorization from this Court to do so then. If Maxwell complains that her inability to use criminal discovery materials in civil matters may result in premature unsealing or prejudicial pretrial publicity, she can likewise raise those claims before this Court on appeal after entry of final judgment in her criminal case. *See, e.g.*, *United States v. Martoma*, No. 13-4807, 2014 WL 68119, at *1 (2d Cir. Jan. 8, 2014) (concluding that even though the defendant's "personal interest in the privacy of embarrassing information is an interest that, as a practical matter, cannot be vindicated after disclosure," that interest is insufficient to merit interlocutory appeal); *United States v. Guerrero*, 693 F.3d 990, 998 (9th Cir. 2012) (finding no jurisdiction over defendant's interlocutory appeal from unsealing of competency evaluation because "any alleged incursions on criminal defendants' rights to privacy and a fair trial do not render the unsealing order effectively unreviewable on appeal"); *Hitchcock*, 992 F.2d at 238-39 (district court's refusal to seal documents not immediately appealable because "[r]eversal after trial, if it is warranted, will

adequately protect . . . interest[s]" asserted by defendant); *cf. Mohawk Indus.*, 558 U.S. at 109 (holding that orders to disclose privileged information are not immediately appealable even though they "intrude[ ] on the confidentiality of attorney-client communications"). If Maxwell is concerned that unsealing will open up an inevitable discovery argument for the Government, she can explain to Judge Nathan when making a suppression motion how an unsealing decision would have been altered by revelation of criminal discovery materials to the unsealing court.[4] If Maxwell is dissatisfied with the result of that suppression motion, she can raise the issue on appeal following final judgement. In short, because Judge Nathan's Order is not effectively unreviewable on appeal after final judgment, Maxwell cannot satisfy the third prong of the collateral order doctrine.[5]

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[4] Notably, though, Maxwell has not explained how her desire to prevent the Government from making an inevitable discovery argument has any bearing on Judge Preska's analysis of whether the First Amendment requires unsealing of judicial documents in a civil case. She offers no case law to support such an argument and does not articulate how her desire to prevent the Government from making an inevitable discovery argument impacts the unsealing analysis in a civil case.

[5] In support of her argument in favor of expanding the collateral order doctrine to embrace her interlocutory appeal here, Maxwell suggests that this appeal has not and will not delay the criminal case.

Maxwell nevertheless argues that reversal of the Order is necessary to prevent documents in a civil case from being unsealed. As further described below, Maxwell fails to explain how the way the Government obtained the confidential criminal discovery materials at issue has any bearing on or in any way affects First Amendment principles governing unsealing decisions in a civil case. Second, and as further described below, Maxwell is already able to share the essential facts she wishes to convey under Judge Nathan's Order. As such, she has not shown how the Order damages her in any way. *See Caparros*, 800 F.2d at 26 (without a showing of serious harm, "review cannot be granted under section 1292(a)(1)").[6]

(Br. 14). That remains to be seen. In the meantime, the litigation of this appeal undoubtedly consumes the resources of the parties, who must now litigate an issue twice in the middle of a pending criminal case—once before the District Court and a second time before this Court. It would be a much more efficient use of resources for the parties to focus on completing the criminal discovery process, preparing pretrial motions, and trial, after which any appeal consolidating all claimed errors could be taken.

[6] As noted in the Government's Motion to Dismiss, 28 U.S.C. § 1292(a)(1) provides that Courts of Appeals shall have jurisdiction over "[i]nterlocutory orders of the district courts of the United States . . . or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dis-

In an attempt to sidestep the jurisdictional issue, Maxwell suggests that this Court should exercise mandamus jurisdiction and issue the extraordinary relief of a writ of mandamus directing the District Court to modify the Protective Order if Maxwell "cannot appeal" the Order under the collateral order doctrine. (Br. 20). The Supreme Court has described this as "a drastic and extraordinary remedy reserved for really extraordinary causes." *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 542 U.S. 367, 380 (2004). This Court has made clear that it "issue[s] a writ of mandamus only in exceptional circumstances amounting to a judicial usurpation of power or a clear abuse of discretion." *In re City of N.Y.*, 607 F.3d 923, 932 (2d Cir. 2010).

"Pretrial discovery orders . . . generally are not reviewable on direct appeal, and we have expressed reluctance to circumvent this salutary rule by use of mandamus." *In re S.E.C. ex rel. Glotzer*, 374 F.3d 184, 187 (2d Cir. 2004). "Nevertheless, mandamus may be available where a discovery question is of extraordinary significance or there is extreme need for reversal of the district court's mandate before the case goes to judgment." *Id.* "To determine whether mandamus is appropriate in the context of a discovery ruling, we

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solve or modify injunctions, except where a direct review may be had in the Supreme Court." Orders regulating discovery in a criminal case, even if couched using "words of restraint," are not injunctions and are therefore not appealable under § 1292(a)(1). *See Pappas*, 94 F.3d at 798; *Caparros*, 800 F.2d at 26.

look primarily for the presence of a novel and significant question of law . . . and . . . the presence of a legal issue whose resolution will aid in the administration of justice." *In re City of N.Y.*, 607 F.3d at 939.

As described below, the District Court did not abuse its discretion in issuing the Order. This Court should not issue a writ of mandamus and should instead follow its "normal practice . . . to decline to treat improvident appeals as mandamus petitions." *Caparros*, 800 F.2d at 26. This case does not raise the rare and exceptional circumstance in which the Court should depart from its practice.

POINT II

The District Court Did Not Abuse Its Discretion in Denying Maxwell's Motion to Modify the Protective Order

Even if this Court had jurisdiction to hear Maxwell's appeal, the Order should be summarily affirmed because the District Court did not abuse its discretion. The Order—which was issued after receiving briefing from the parties—carefully evaluated Maxwell's request and reached a conclusion indisputably within the bounds of permissible discretion.

A. Applicable Law

This Court reviews a district court's decision denying modification of a protective order for abuse of discretion. *See, e.g.*, *United States v. Longueuil*, 567 F. App'x 13, 16 (2d Cir. 2014) (finding that the district court did not abuse its discretion in denying a motion

to vacate a protective order); *S.E.C. v. The Street.com*, 273 F.3d 222, 228-29 (2d Cir. 2001) (reviewing the district court's order lifting its protective order covering deposition testimony for abuse of discretion). "A district court abuses or exceeds the discretion accorded to it when (1) its decision rests on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding, or (2) its decision—though not necessarily the product of a legal error or a clearly erroneous factual finding—cannot be located within the range of permissible decisions." *Id.*

Under the Federal Rules of Criminal Procedure, the District Court is vested with broad discretion to oversee the criminal discovery process, including entering protective orders "for good cause [that] deny, restrict, or defer discovery or inspection, or grant other appropriate relief." Fed. R. Crim. P. 16(d). Courts overseeing criminal cases in this Circuit have borrowed from the standard governing modification of protective orders in civil cases, in which there is a "strong presumption against the modification of a protective order." *In re Teligent, Inc.*, 640 F.3d 53, 59 (2d Cir. 2011). *See, e.g.*, *United States v. Kerik*, No. 07 Cr. 1027 (LAP), 2014 WL 12710346, at *1 (S.D.N.Y. July 23, 2014) (applying civil standard for modification of protective order in criminal case and holding that modification of Rule 16 protective order is "'presumptively unfair'" where a party reasonably relied upon the order); *see also United States v. Calderon*, No. 15 Cr. 25 (JCH), 2017 WL 6453344, at *2 (D. Conn. Dec. 1, 2017); *United States v. Morales*, 807 F.3d 717, 723 (5th Cir. 2015) (borrowing from the standard for "good cause" under Fed. R. Civ. P 26(c) when evaluating whether to

modify a protective order entered in a criminal case); *United States v. Wecht*, 484 F.3d 194, 211 (3rd Cir. 2007) (same).

B. Discussion

Judge Nathan did not abuse her discretion when entering the challenged Order. In reaching her decision, Judge Nathan applied the correct legal standard, evaluated Maxwell's argument that she needed to disclose certain criminal discovery materials to the relevant judicial officers to "ensure the fair adjudication of issues being litigated in those civil matter," found that Maxwell's proffered reasons for the request were "vague, speculative, and conclusory," and concluded that Maxwell's arguments "plainly fail to establish good cause." (A. 101). At no point did Judge Nathan fail to apply established law, and it cannot be said that her careful review of the parties' arguments was not within the bounds of permissible discretion.

First, Maxwell still fails to articulate any legal basis for the use of discovery material received from the Government in a criminal case to litigate a separate civil case. Maxwell expressly consented to the entry of a Protective Order prohibiting her from using criminal discovery materials in civil litigation.[7] In her motion to modify that Protective Order, Maxwell cited no legal authority for the use of criminal discovery in civil litigation. Her appeal points to no such authority, and she

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[7] Maxwell did so knowing that the Government had charged her with perjury in connection with civil cases.

does not suggest that Judge Nathan committed legal error when issuing the Order denying her motion.

Second, Judge Nathan did not abuse her discretion when determining that Maxwell had offered no basis for determining that good cause justified a modification of the Protective Order. In her briefing before the District Court, Maxwell offered no coherent explanation of how the criminal discovery materials could have any conceivable impact on the issues pending in civil litigation. She cited no case law suggesting that, for example, the possibility of an inevitable discovery argument by the Government should foreclose unsealing in a civil case, or that unsealing analysis should be affected by a concern about pretrial publicity in a separate criminal case. In the absence of any such explanation, Judge Nathan's Order declining to modify the Protective Order did not amount to an abuse of her broad discretion when overseeing an ongoing criminal case.

Even on this appeal, Maxwell still fails to explain why she needs to use materials relating to the Government's applications seeking the modification of certain protective orders in other judicial proceedings. As far as the Government is aware, the only issue pending in the civil litigation in which Maxwell seeks to use those criminal discovery materials involves whether the First Amendment requires that certain filings in those cases be made available on the public docket. Maxwell cannot explain why certain criminal discovery materials are relevant to the issues pending in those cases or how the manner in which the Government obtained

certain discovery materials would impact the unsealing analysis under First Amendment principles in a civil matter. Even if Maxwell were correct that the way in which the Government obtained the materials was improper—and she is not—that fact would have no bearing on the analysis of whether materials in certain civil cases should be unsealed. Maxwell cites not a single case to support the conclusion that her desire to prevent the Government from raising an inevitable discovery argument in suppression litigation should impact the unsealing analysis in a civil case. She offers no coherent argument for how the criminal discovery materials would impact any decision in a civil case.

At bottom, it remains unclear what legal argument Maxwell wishes to make in her civil cases based on the criminal discovery materials she has identified or what relevance those materials have to the litigation of those civil matters. Accordingly, Judge Nathan did not abuse her discretion when concluding that Maxwell "furnishe[d] no substantive explanation regarding the relevance of the Documents to decisions to be made in those matters, let alone any explanation of why modifying the protective order in order to allow such disclosure is necessary to ensure the fair adjudication of those matters." (A. 101).

In pressing for a different result here, Maxwell argues that "if the deposition material is unsealed, it may foreclose" any of her arguments to Judge Nathan about the perjury counts or other remedies available to Maxwell based on the Government's alleged circumvention of Second Circuit law. (Br. 27). Maxwell claims that "all [she] seeks in this appeal is the ability to

make these arguments to Judge Preska and Judge Nathan before it's too late." (Br. 27-28). To the extent Maxwell seeks to challenge the manner in which the Government obtained the materials at issue—a challenge that itself would not justify the relief presently requested—Maxwell can make such arguments before Judge Nathan, and the Government can and will vigorously oppose them, at the appropriate stage in the case.

If anything, this appeal appears to be a thinly veiled attempt to have this Court weigh in on the Government's investigative methods. Her briefing is filled with accusations of impropriety on the part of the Government but with virtually no explanation of how that supposed impropriety relates to any civil case. It appears that Maxwell would like this Court to agree that the Government illegally obtained evidence before the issue has even been briefed before Judge Nathan. This Court's precedents do not countenance such efforts to bypass district courts. *See, e.g.*, *Frontera Res. Azer. Corp. v. State Oil Co. of the Azer. Republic*, 582 F.3d 393, 401 (2d Cir. 2009) (because issue "ha[d] not been decided" by district court, "it would be premature for us to address this question without hearing first from the court below"). Maxwell presents no sound reason to deviate from precedent here, nor is one readily apparent. Maxwell is fully capable of litigating any suppression motions in the District Court, and will have an opportunity to do so.

Maxwell suggests that the "very point of this appeal" is to share information with Judge Preska under seal. (Br. 11). She asks that this Court permit her to

"tell Judge Preska what happened and let Judge Preska decide whether the information weighs against unsealing the deposition material or in favor of a stay." (Br. 31). To the extent Maxwell seeks to inform Judge Preska—or any other judicial officer—of the basic facts surrounding the criminal prosecution and the criminal discovery materials at issue, the District Court has already granted Maxwell the supposed relief she seeks from this Court. Although the District Court did not modify the Protective Order, Judge Nathan authorized Maxwell to convey, under seal, to the appropriate judicial officer the fact that the Government obtained an order from Court-1 permitting the Recipient to comply with a subpoena for materials covered by a protective order, that Court-2 subsequently denied similar relief in another case, and that Maxwell "learned of this information (sealed by other courts) as a result of Rule 16 discovery in this criminal matter." (A. 101-02). If the "very point" of Maxwell's request to seek a modification of the Protective Order was to share information and not to challenge the legality of the Government's investigative techniques, then her appeal is moot because Judge Nathan has already granted her permission to do so. Maxwell does not explain why those facts are not enough.

Despite those available avenues, Maxwell still argues that she cannot move to stay the unsealing process before Judge Preska and "thereby safeguard her right to a fair trial in the criminal case." (Br. 29). As already noted, though, it is a matter of public record that the charges against Maxwell include allegations of perjury in civil cases. (A. 27-29). Without relying on any materials she received through criminal discovery,

Maxwell can argue on the public record that unsealing the materials would have a prejudicial effect on her right to a fair trial. To the extent Maxwell complains that unsealing filings in a civil case may result in unfair pretrial publicity in her criminal case, she will have the opportunity to request that the District Court establish practices to help ensure she gets a fair and impartial jury.[8] If she is displeased with those efforts,

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[8] Maxwell makes much of the Government having moved to intervene and stay the proceedings in *Doe v. Indyke*, noting that the Government has not moved to intervene in *Giuffre v. Maxwell*, to stay the unsealing process. (Br. 29). Maxwell suggests that the Government's decision to not do so is motivated by "unprincipled" reasons. (Br. 29-30). Setting Maxwell's conspiracy theories aside, *Doe v. Indyke* and *Giuffre v. Maxwell* are in completely different procedural postures, which implicate different concerns regarding a pending criminal case. The latter was resolved in 2017 and the determination of what material should remain sealed remains the only open issue. Accordingly, there is no more discovery to be conducted in the *Giuffre* case and no possible concern to the Government that, for example, its trial witnesses in the criminal case might be deposed in that civil case. Additionally, the fact that a document may be unsealed through an independent process before Judge Preska would not reveal the Government's investigative focus or techniques.

In *Doe v. Indyke*, on the other hand, discovery was just beginning, and if discovery were to have proceeded, multiple witnesses or potential witnesses at

she can appeal to this Court following the entry of final judgment in the criminal case.

Maxwell presented Judge Nathan with no coherent reason—not to mention good cause—to modify the duly entered Protective Order in this criminal case. In the absence of any explanation of Maxwell's need to use criminal discovery materials to litigate a civil case, Judge Nathan was well within her discretion when determining that Maxwell's arguments "plainly fail to establish good cause." (A. 101). Judge Nathan's Order falls comfortably within the range of permissible decisions on a motion to modify a protective order, and so she did not abuse her discretion in so ruling.

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the criminal trial would likely have been subject to deposition. That concern, among others, raised a significant risk that proceeding with the civil matter would adversely affect the ongoing criminal prosecution against Maxwell. Moreover, the interests of judicial economy and the public interest in enforcement of the criminal law were served by a stay in the *Doe* case because the outcome of the criminal case could resolve disputed issues in the *Doe* case. Such concerns are not present in *Giuffre v. Maxwell*.

CONCLUSION

The District Court's order denying Maxwell's motion to modify the Protective Order should be affirmed.

Dated: New York, New York
October 2, 2020

Respectfully submitted,

AUDREY STRAUSS,
Acting United States Attorney for the Southern District of New York, Attorney for the United States of America.

LARA POMERANTZ,
MAURENE COMEY,
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Assistant United States Attorneys, Of Counsel.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel hereby certifies that this brief complies with the type-volume limitation of the Federal Rules of Appellate Procedure and this Court's Local Rules. As measured by the word processing system used to prepare this brief, there are 7,287 words in this brief.

AUDREY STRAUSS,
Acting United States Attorney for the Southern District of New York

By: KARL METZNER,
Assistant United States Attorney

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ORAL ARGUMENT STATEMENT (Local Rule 34.1(a))

TO REQUEST ORAL ARGUMENT, FILL OUT THIS FORM AND FILE IT WITH THE CLERK WITHIN 14 DAYS AFTER THE FILING OF THE LAST APPELLEE BRIEF. IF THIS FORM IS NOT TIMELY FILED, YOU WILL NOT BE PERMITTED TO ARGUE IN PERSON.

Short Title of Case: United States v. Ghislaine Maxwell Docket No.: 20-3061

Name of Party: United States of America

Status of Party (e.g., appellant, cross-appellee, etc.): Appellee

Check one of the three options below:

☐ I want oral argument.

☑ I want oral argument only if at least one other party does.

☐ I do not want oral argument.

An attorney whose preference depends on whether other attorneys will argue should consider conferring before requesting argument. After the appeal has been scheduled for oral argument, a motion by counsel to forgo oral argument, even on consent, may be denied.

If no party wants oral argument, the case will be decided on the basis of the written briefs. If you want oral argument, you must appear in Court on the date set by the Court for oral argument.

The Court may determine to decide a case without oral argument even if the parties request it.

If you want oral argument, state the name of the person who will argue:

Name: Lara Pomerantz

(An attorney must be admitted to practice before the Court in accordance with Local Rule 46.1.)

If you want oral argument, list any dates (including religious holidays), that fall in the interval from 6 to 20 weeks after the due date of this form, that the person who will argue is not available to appear in Court:

ANYONE WHO WANTS TO ARGUE MUST UPDATE THE COURT IN WRITING OF ANY CHANGE IN AVAILABILITY. THE COURT MAY CONSIDER A FAILURE TO UPDATE ABOUT AVAILABILITY WHEN DECIDING A MOTION TO POSTPONE A SET ARGUMENT DATE.

Filed by:

Print Name: Lara Pomerantz Date: 10/2/2020

Signature: s/ Lara Pomerantz

(Revised December 2011)

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: October 07, 2020
Docket #: 20-3061cr
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 MOTION PLACED ON THE CALENDAR

A motion for consolidation filed in the above-referenced case has been added as an argued case to the substantive motions calendar for Tuesday, October 13, 2020 at 2:00pm (Via Teleconference). The argument will be held in the Thurgood Marshall U.S. Courthouse, New York, NY 10007, 17th floor, Room 1703.

Inquiries regarding this case may be directed to 212-857-8595.

20-3061

United States Court of Appeals
for the Second Circuit

UNITED STATES OF AMERICA

Plaintiff-Appellee,

—against—

GHISLAINE MAXWELL,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, 20-CR-330 (AJN)

Ghislaine Maxwell's Reply Brief

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Introduction

The government's brief suffers from two fundamental flaws. It obscures the relief Ms. Maxwell actually seeks, and it confuses the arguments she actually makes.

As to the relief she seeks, Ms. Maxwell's request is specific and narrow: She seeks permission to share relevant information, under seal, with other Article III judicial officers, specifically Judge Preska and the panel of this Court deciding the appeal of Judge Preska's order unsealing the civil deposition material, *Giuffre v. Maxwell*, No. 20-2413. Only by obscuring what Ms. Maxwell actually seeks can the government claim with a straight face that this appeal won't be moot if this Court declines to exercise jurisdiction now.

As to the arguments she makes, there are several (fairly obvious) reasons why Judge Preska and this Court should know just how prosecutors obtained the deposition material and who turned it over to them. If Judge Preska knew this information, she might very well decline to unseal Ms. Maxwell's deposition transcripts to protect Ms. Maxwell's ability in the criminal case to litigate the government's violation of *Martindell v. International Telephone & Telegraph Corp.*, 594 F.2d 291 (2d Cir. 1979), *cited with approval in In re Teligent, Inc.*, 640 F.3d 53, 58 (2d Cir. 2011). She might also reconsider whether Ms. Maxwell reasonably relied

on the civil protective order's guarantee of confidentiality in declining to invoke her Fifth Amendment right to remain silent.

Instead of fairly addressing these arguments, however, the government retreats to the claim that Ms. Maxwell "does not articulate" or "does not explain" why Judge Preska and this Court need to know [redacted]. Ans.Br. 18 n.4 & 27. But just because the government lacks a persuasive response does not mean Ms. Maxwell hasn't explained or articulated herself.

The question then is what could justify keeping Judge Preska and this Court in the dark about the relevant facts. And if that's the question, the government's brief provides no answer.

Jurisdiction

There are three conditions to seeking interlocutory review under the collateral order doctrine: The order on appeal must (1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment. *Will v. Hallock*, 546 U.S. 345, 349 (2006) (citing *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993)). The government

does not appear to dispute that Judge Nathan's order satisfies the first two conditions.[1]

Instead, the government focuses on the third condition, arguing that Ms. Maxwell can appeal Judge Nathan's order after her criminal jury trial. Ans.Br. 16. But the government can make this argument only by obscuring the relief Ms. Maxwell actually seeks.

To be clear, Ms. Maxwell seeks permission to share with Judge Preska and this Court, under seal, just what the government obtained [redacted]

[redacted]

[redacted]

[1] Perhaps suggesting that Judge Nathan's order is not "final," the government notes that the order "did not end the entire litigation as to [Ms.] Maxwell. To the contrary, [Ms.] Maxwell is scheduled to file pretrial motions in December 2020 and to proceed to trial in July 2021." Ans.Br. 14.

This is just a truism, as no one disputes that "Judge Nathan's Order did not end the entire litigation." If it had, Ms. Maxwell would have invoked this Court's jurisdiction under 28 U.S.C. § 1291.

But it is *because* "Judge Nathan's Order did not end the entire litigation" that Ms. Maxwell invokes the collateral order doctrine as a basis for this Court's jurisdiction. And in evaluating the applicability of that doctrine, the government does not appear to dispute that Judge Nathan's order "conclusively determined the disputed question": Whether the criminal protective order should be modified. That is all "finality" requires in the collateral order context.

[redacted] and how it obtained it (by circumventing this Court's decision in *Martindell*).

Judge Preska needs that information now, not later, because her order unsealing the deposition material is about to go into effect and because she is poised to decide whether and to what extent to keep unsealing the sealed material in the civil case[redacted]. The panel of this Court reviewing Judge Preska's order needs that information now, not later, because it is poised to review Judge Preska's order unsealing the deposition material without the benefit of knowing all the relevant information. And unless this Court is privy to the relevant information, it won't be able to decide whether Judge Preska should reconsider her order given [redacted]. Ms. Maxwell simply asks this Court to review these issues now, before it's too late.

A post-trial appeal will be too late. By that time, if this Court affirms Judge Preska's unsealing order without the benefit of knowing all the facts, Ms. Maxwell's April 2016 deposition will be publicly released. By that time, Judge Preska will have largely if not entirely decided what other material from the civil case should be unsealed. By that time, it will be too late for Ms. Maxwell to seek a stay of the unsealing process and fairly explain why a stay is appropriate. And by that time, there won't be a way to "re-seal" material prematurely released to the

public.[2] Op.Br. 16. (distinguishing *United States v. Caparros*, 800 F.2d 23 (2d Cir. 1986)).

The government argues that Ms. Maxwell can wait until after the criminal trial to challenge whether, for example, Judge Preska's unsealing decisions produce unfair pretrial publicity in the criminal case. But a panel of this Court considering an appeal in the criminal case presided over by Judge Nathan won't have any jurisdiction to review orders entered by Judge Preska in the civil case. The time for reviewing Judge Preska's unsealing order in the civil case is right now in the appeal of Judge Preska's order, *Giuffre v. Maxwell*, No. 20-2413.

The government also argues that, in a post-trial appeal, Ms. Maxwell can challenge the government's conduct in obtaining Ms. Maxwell's deposition transcripts and the use of those transcripts as a basis for two perjury counts.

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[2] This Court should accordingly reject the government's argument that "[t]o the extent Maxwell still wishes to use materials she obtained through criminal discovery for other purposes after entry of final judgment in the criminal case, she can seek authorization from this Court to do so then." Ans.Br. 17.

Similarly, the government misunderstands the relief Ms. Maxwell seeks when it contends that "[i]f Maxwell complains that her inability to use criminal discovery materials in civil matters may result in premature unsealing . . . , she can . . . raise [that] claim[] before this Court on appeal after entry of final judgment in her criminal case." Ans.Br. 17. A post-final-judgment appeal will do no good because there is no way to "re-seal" material already unsealed and no way to retroactively stay an unsealing process that is largely if not entirely complete.

Ans.Br. 18. But as Ms. Maxwell explained in her opening brief, if Judge Preska orders the deposition transcripts unsealed, the government will invoke Judge Preska's order as a shield against its improper conduct. Op.Br. 27–28, 30. The government will argue that it would have inevitably discovered Ms. Maxwell's deposition transcripts or that any improper conduct on its part was ultimately harmless. Op.Br. 30. Conspicuously, the government in the answer brief never denies that it will make such an argument. Ans.Br. 18 & n.4.

The government responds that if Ms. Maxwell "is concerned that unsealing will open up an inevitable discovery argument for the Government, she can explain to Judge Nathan when making a suppression motion how an unsealing decision would have been altered by revelation of criminal discovery materials to the unsealing court." Ans.Br. 18. This is fanciful thinking.

If this Court affirms Judge Preska's decision unsealing the deposition material, Judge Nathan likely will not (cannot?) reject an inevitable discovery argument from the government. Judge Nathan is not going to second-guess Judge Preska's decision to unseal the deposition material if this Court affirms its release. This, of course, explains why the government has not moved to intervene in *Giuffre v. Maxwell*, No. 15-cv-7433 (S.D.N.Y.), to stay the unsealing process, or to oppose the unsealing of the deposition material. Because Judge Preska and the panel of this

Court reviewing Judge Preska's decision deserve to know *now* [redacted], a post-trial appeal is insufficient. This Court, therefore, has jurisdiction under the collateral order doctrine, because Judge Nathan's order is effectively unreviewable on appeal from a final judgment. *See Will*, 546 U.S. at 349.

In its final argument, the government says Ms. Maxwell "fails to explain how the way the Government obtained the confidential criminal discovery materials at issue has any bearing on or in any way affects First Amendment principles governing unsealing decisions in a civil case." Ans.Br. 19. The government also claims that Ms. Maxwell "is already able to share the essential facts she wishes to convey under Judge Nathan's Order." Ans.Br. 19. Neither contention has merit.

The first contention is a retread of the government's response to Ms. Maxwell's motion to consolidate, in which the government professed not to understand the relationship between the two cases. Doc. 39, pp 19–21, ¶¶ 26–27.

[redacted]

[redacted] And Ms. Maxwell's deposition testimony in the civil case provides the substantive basis for two of the six charges she faces. App. 27–29.

As explained in Ms. Maxwell's opening brief, Doc. 60, her motion to consolidate, Doc. 17, and the reply in support, Doc. 54, [redacted] For example, in balancing the qualified First Amendment presumption of access (a presumption that is significantly less as applied to the deposition material than the summary judgment material this Court released in *Brown v. Maxwell*), Judge Preska and this Court must evaluate countervailing considerations including, most prominently, Ms. Maxwell's reliance on the civil protective order. *Giuffre v. Maxwell*, No. 20-2413, Doc. 40, pp 21–28. [redacted] Ms. Giuffre's attorneys repeatedly used the existence of the civil protective order to deflect Ms. Maxwell's arguments about her right to privacy, her right against self-incrimination, and her concern that Ms. Giuffre would use documents in the civil action to support a criminal investigation. *Giuffre v. Maxwell*, No. 20-2413, Doc. 111, p 20. Ms. Maxwell then did not invoke her Fifth Amendment right to remain silent and instead testified at two depositions. *Id.* [redacted] Ms. Giuffre's attorneys

repeatedly downplayed the risk of a criminal investigation [redacted] Ms. Maxwell's reliance on the protective order, an unquestionably valid factor weighing against unsealing, is all the more apparent once it is evaluated in its full context. That context now includes: the grand jury investigation; [redacted]

The information Ms. Maxwell wants to share with Judge Preska and this Court is also relevant to show how the government bypassed *Martindell*. While this Court (in either appeal) need not pass on the propriety of the government's conduct, preserving Ms. Maxwell's right to litigate that issue before Judge Nathan is essential to her due process right to a fair trial. U.S. CONST. amend. V. If the

deposition material is prematurely released, as the government so clearly desires, Ms. Maxwell's ability to make the *Martindell* argument will be compromised.[3]

Third, Ms. Maxwell intends to move Judge Preska to stay future unsealing pending the outcome of the criminal case. But she cannot fairly make her case to Judge Preska unless Judge Preska knows [redacted] Judge Preska and the panel of this Court deciding the unsealing appeal are the only relevant actors who *don't* know the relevant facts.

The government's second contention—that Ms. Maxwell can already share the "basic facts" with Judge Preska—misunderstands what Ms. Maxwell seeks to share (under seal and not publicly) and what Judge Nathan's order permits (not very much). According to the government, Ms. Maxwell is free to share the identity of "Court-1" and "Court-2" and

> the fact that the Government obtained an order from Court-1 permitting the Recipient to comply with a subpoena for materials

[3] Surely due process does not contemplate a scenario in which Ms. Maxwell is never permitted to challenge [redacted]. But that's apparently the government's position. Ms. Maxwell did not know of the [redacted] proceeding before [redacted], so she couldn't argue against [redacted]. Ms. Maxwell did not know when [redacted], so she couldn't appeal. And if Judge Preska's unsealing order goes into effect, the government will seek to deny Ms. Maxwell the right to challenge its conduct before Judge Nathan.

> covered by a protective order, that Court-2 subsequently denied similar relief in another case, and that Maxwell "learned of this information (sealed by other courts) as a result of Rule 16 discovery in this criminal matter."

Ans.Br. 27 (quoting App. 101–02). If only it were so simple.

What the government doesn't acknowledge is that, under the protective order and Judge Nathan's decision declining to modify it, Ms. Maxwell cannot:

- Disclose who the "Recipient" is [redacted];
- Disclose what material the government obtained [redacted];
- Disclose that the bulk of the government's criminal case against Ms. Maxwell [redacted];
- Disclose why [redacted] (Court-2) declined the government's [redacted] request [redacted]; or

- Disclose why [redacted] (Court-1) granted the government's [redacted] request [redacted].

The "basic facts" Ms. Maxwell is allowed to share thus do not include the "material facts."

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The collateral order doctrine is, admittedly, the exception and not the rule. Its purpose is to avoid delay and piecemeal appeals.[4] But it's not as inflexible as the government suggests, and its application is not oblivious to reality. It is a practical doctrine that exists for those few cases in which a post-trial appeal is inadequate to the task and the issue for immediate appeal is separable from the merits. This appeal, novel as it is, falls within those parameters.[5]

[4] Although the government says it "remains to be seen" whether this appeal will delay the criminal case, it offers no specifics or even speculation about how such a delay might be occasioned. Ans.Br. 19 n.5. To be clear, this appeal has nothing to do with the merits of the government's allegations against Ms. Maxwell, and it will not delay the criminal trial.

[5] As for Ms. Maxwell's alternative request that this Court exercise mandamus jurisdiction, the government's brief denies that Judge Nathan abused her discretion but doesn't otherwise contend that this Court may exercise mandamus jurisdiction. Ans.Br. 20–21. Because, as explained below, Judge Nathan abused her discretion, this Court should issue a writ of mandamus if it concludes that it lacks jurisdiction under the collateral order doctrine.

Argument

Apart from obscuring the relief Ms. Maxwell actually seeks, the other major feature of the government's brief is its confusion of the arguments Ms. Maxwell actually makes on the merits. And nothing is more illustrative of the government's confusion than this fact: The answer brief doesn't even cite this Court's decision in *Martindell*.

The closest the government comes to acknowledging Ms. Maxwell's argument is to say this: "To maintain the integrity of the grand jury investigation and in accordance with both Federal Rule of Criminal Procedure 6(e) and its standard practice, the Government did not notify Maxwell or her counsel of the Subpoenas." Ans.Br. 5. But standard practice doesn't justify circumventing a thirty-year-old decision of this Court, which required notice to Ms. Maxwell. *Martindell*, 594 F.2d at 294; App. 368–69

Moreover, nothing in Rule 6(e) relieved the government of its burden to comply with *Martindell* by seeking to intervene in the civil case or by otherwise giving Ms. Maxwell notice of the subpoena and an opportunity to move to quash. Rule 6(e)(2)(vi) says that "an attorney for the government" "must not disclose a matter occurring before the grand jury." The [redacted] was not a "matter occurring before the grand jury." And

nothing prohibited [redacted] from informing Judge Preska and Ms. Maxwell about the subpoena; Rule 6(e) does not apply to grand jury witnesses. *United States v. Sells Eng'g, Inc.*, 463 U.S. 418, 425 (1983).

Despite the government's attempt (once again) to mischaracterize Ms. Maxwell's argument,[6] this Court need not in this case wade into the propriety of the government's conduct. All Ms. Maxwell seeks is the preservation of her ability to challenge the government's conduct before Judge Nathan. This Court should permit Ms. Maxwell a fair opportunity to persuade Judge Preska and the panel of this Court reviewing her order that the status quo should be preserved.

The government again implies that because Ms. Maxwell consented to the protective order she can't now complain that it should be modified. Ans.Br. 23–24.[7] The government points out that, at the time of her consent, Ms. Maxwell knew

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[6] The government says that Ms. Maxwell's brief "appears to be a thinly veiled attempt to have this Court weigh in on the Government's investigative methods." Ans.Br. 26. That is not so. All Ms. Maxwell seeks is the ability to fairly challenge before Judge Nathan the government's "investigative methods." As the government does not dispute, that challenge will be compromised unless the deposition material remains sealed. But Judge Preska and the panel of this Court reviewing Judge Preska don't know that, and the government wants to keep it that way.

[7] Moreover, the purpose of the criminal protective order's prohibition on using criminal discovery in a civil case is to prevent the introduction of new information in a civil case to gain an advantage. Ms. Maxwell's requested

—footnote cont'd on next page—

"the Government had charged her with perjury in connection with civil cases." Ans.Br. 23 n.7. But knowing that the government had copies of her depositions is a far cry from knowing [redacted] Ms. Maxwell's original consent to the criminal protective order is irrelevant to this appeal.

The government next argues that Ms. Maxwell has not offered a "coherent explanation of how the criminal discovery materials could have any conceivable impact on the issues pending in civil litigation." Ans.Br. 24. To the contrary, Ms. Maxwell has repeatedly explained why the criminal discovery is relevant to Judge Preska and the panel of this Court reviewing Judge Preska's order. Op.Br. 26–33.

In addition to the reasons identified above, This Brief, *supra* at 7–10, Judge Preska simply never had before her the full picture when deciding whether to unseal the deposition material. So Judge Preska never considered the government's position that the sealed material should not be released because it might prejudice the ongoing investigation. Nor did she consider Judge Nathan's view, embodied in

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modification of the criminal protective order is fully consistent with that purpose, because she seeks only: (1) to share relevant information with Judge Preska; (2) under seal; (3) [redacted]; and (4) to facilitate Judge Preska in performing a non-merits task assigned to her by this Court.

the criminal protective order, that [redacted] should not be used except in the criminal case and therefore should not be released publicly.[8]

This Court tasked Judge Preska with evaluating whether and to what extent the civil case filings should be unsealed considering the totality of the circumstances. *Brown v. Maxwell*, 929 F.3d 41, 47 & n.13 (2d Cir. 2019). Judge Preska is performing this task ignorant of the fact that [redacted] Unless the criminal protective order is modified, Judge Preska will remain in the dark, and she will never be given the opportunity to consider the circumstances in their totality.

The government appears to have abandoned the argument it made to Judge Nathan that modifying the protective order threatens the secrecy of the ongoing grand jury investigation. Op.Br. 31–32. And for good reason. Ms. Maxwell has never sought to make public material the criminal protective order shields from disclosure. All she seeks is permission to share, *under seal*, information [redacted]

[8] The government's view that [redacted] should not be released, and Judge Nathan's order to that effect, also lend support to Ms. Maxwell's contention that the release of the deposition material by Judge Preska [redacted] will unfairly prejudice her right to a fair trial by an impartial jury. *See* U.S. CONST. amends. V, VI; *Nixon v. Warner Commc'ns*, 435 U.S. 589, 598 (1978).

[redacted] *Giuffre v. Maxwell* but kept secret from Judge Preska and this Court.

Finally, the government offers a halfhearted defense of its decision to intervene in *Doe v. Indyke*, No. 20-cv-00484 (S.D.N.Y.), while choosing to remain on the sidelines of *Giuffre v. Maxwell*. Ans.Br. 28–29 n.8. According to the government, there is no need to intervene in *Giuffre v. Maxwell* because discovery was already completed while discovery in *Doe v. Indyke* was just beginning. But this distinction ignores the government's position on the confidentiality of the criminal discovery material in this case. Again, [redacted]

In the criminal case, the government insists [redacted], so secret in fact that Ms. Maxwell must not be allowed to share their contents with Judge Preska or this Court, even under seal. But if that's right, then the government should oppose unsealing any filings from *Giuffre v. Maxwell* [redacted] The government, of course, hasn't done that, and its answer brief offers *no* explanation why. The reason,

though, is obvious: The government wants to shield itself from Ms. Maxwell's forthcoming motion before Judge Nathan challenging its circumvention of *Martindell*. This Court should not prejudge the *Martindell* issue as the government seeks.

Conclusion

At bottom, when asked to justify why Judge Preska and this Court should remain in the dark, the government offers little more than this: because the protective order says so. But in the face of all the reasons why the relevant judicial decision makers should have all the relevant information, the government's answer is not good enough.

This Court should reverse the district court's order denying Ms. Maxwell's motion to modify the protective order.

October 8, 2020.

Respectfully submitted,

s/ Adam Mueller

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Certificate of Compliance with Rule 32(A)

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). It contains 4,096 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(III).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6). It has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 pt. Equity.

s/ Adam Mueller

Certificate of Service

I certify that on October 8, 2020, I filed *Ms. Maxwell's Reply Brief* with the Court via CM/ECF, which will send notification of the filing to all counsel of record.

s/ Nicole Simmons

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): 20-3061 Caption [use short title] United States v. Maxwell

Motion for: Leave to File Unredacted Reply Brief Under Seal

Set forth below precise, complete statement of relief sought:

Seeking leave to file under seal Ms. Maxwell's reply brief. The brief references materials currently under seal and/or shielded by the criminal protective order.

MOVING PARTY: Ghislaine Maxwell
☐ Plaintiff ☑ Defendant
☑ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY: United States of America

MOVING ATTORNEY: Adam Mueller

OPPOSING ATTORNEY: Lara Pomerantz

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Court-Judge/Agency appealed from: Judge Nathan, S.D.N.Y.

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 INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

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

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

Signature of Moving Attorney:
s/ Adam Mueller **Date:** 10/08/2020 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

20-3061

United States Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

GHISLAINE MAXWELL,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK, 20-CR-330 (AJN)

Unopposed Motion for Leave to File Unredacted Reply Brief under Seal

Defendant-Appellant Ghislaine Maxwell, through her attorneys Haddon, Morgan and Foreman, P.C., moves unopposed for leave to file her unredacted reply brief under seal. As grounds for this request, Ms. Maxwell states:

This appeal addresses an order by Judge Nathan declining to modify a criminal protective order. A related case, *Giuffre v. Maxwell*, No. 20-2413,

addresses an order by Judge Preska unsealing certain deposition material. Ms. Maxwell has filed a motion to consolidate both appeals.

The unredacted reply brief references material currently under seal and/or shielded by the criminal protective order.

To comply with the criminal protective order, Ms. Maxwell can file the unredacted version of the reply only under seal with this Court.

In compliance with the criminal protective order, Ms. Maxwell will publicly file on ECF a redacted copy of her reply brief.

Counsel for Ms. Maxwell conferred with the government regarding this motion. The government does not oppose this motion.

For these reasons, Ms. Maxwell respectfully requests leave to file her unredacted reply brief under seal.

October 8, 2020.

Respectfully submitted,

s/ Adam Mueller

Ty Gee
Adam Mueller
HADDON, MORGAN AND FOREMAN, P.C.
150 East 10th Avenue
Denver, CO 80203
Tel 303.831.7364
Fax 303.832.2628
tgee@hmflaw.com
amueller@hmflaw.com
Counsel for Defendant-Appellant Ghislaine Maxwell

Certificate of Compliance

Under Federal Rule of Appellate Procedure 32(g) and Rule 27(d)(2)(A), the undersigned counsel hereby certifies that this motion complies with the type-volume limitation of the Federal Rules of Appellate Procedure. As measured by the word processing system used to prepare this motion, there are 168 words in this motion.

s/ Adam Mueller

Certificate of Service

I certify that on October 8, 2020, I filed this *Unopposed Motion for Leave to File Unredacted Reply Brief under Seal* with the Court via CM/ECF, which will send notification of the filing to all counsel of record. I also certify that I emailed a copy of this motion to all counsel of record.

s/ Nicole Simmons

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ORAL ARGUMENT STATEMENT (Local Rule 34.1(a))

TO REQUEST ORAL ARGUMENT, FILL OUT THIS FORM AND FILE IT WITH THE CLERK WITHIN 14 DAYS AFTER THE FILING OF THE LAST APPELLEE BRIEF. IF THIS FORM IS NOT TIMELY FILED, YOU WILL NOT BE PERMITTED TO ARGUE IN PERSON.

Short Title of Case: United States v. Maxwell Docket No.: 20-3061

Name of Party: Ghislaine Maxwell

Status of Party (e.g., appellant, cross-appellee, etc.): Appellant

Check one of the three options below:

- [x] I want oral argument.
- [ ] I want oral argument only if at least one other party does.
- [ ] I do not want oral argument.

An attorney whose preference depends on whether other attorneys will argue should consider conferring before requesting argument. After the appeal has been scheduled for oral argument, a motion by counsel to forgo oral argument, even on consent, may be denied.

If no party wants oral argument, the case will be decided on the basis of the written briefs. If you want oral argument, you must appear in Court on the date set by the Court for oral argument.

The Court may determine to decide a case without oral argument even if the parties request it.

If you want oral argument, state the name of the person who will argue:

Name: Adam Mueller

(An attorney must be admitted to practice before the Court in accordance with Local Rule 46.1.)

If you want oral argument, list any dates (including religious holidays), that fall in the interval from 6 to 20 weeks after the due date of this form, that the person who will argue is not available to appear in Court:

ANYONE WHO WANTS TO ARGUE MUST UPDATE THE COURT IN WRITING OF ANY CHANGE IN AVAILABILITY. THE COURT MAY CONSIDER A FAILURE TO UPDATE ABOUT AVAILABILITY WHEN DECIDING A MOTION TO POSTPONE A SET ARGUMENT DATE.

Filed by:

Print Name: Adam Mueller Date: 10/08/2020

Signature: s/ Adam Mueller

(Revised December 2011)

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of October, two thousand nineteen,

---

United States of America,

Appellee,

v.

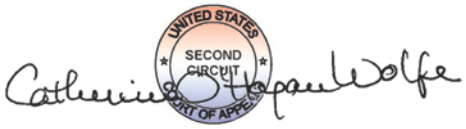
Ghislaine Maxwell, AKA Sealed Defendant 1,

Defendant - Appellant.

ORDER
Docket No. 20-3061

IT IS HEREBY ORDERED that the motion by Appellant for leave to file the unredacted reply brief under seal is GRANTED without prejudice to review by the panel in due course.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court



20-3061
United States v. Maxwell

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of October, two thousand twenty.

PRESENT: JOSÉ A. CABRANES,
ROSEMARY S. POOLER,
REENA RAGGI,
Circuit Judges.

UNITED STATES,

Appellee,

v.

GHISLAINE MAXWELL,

Defendant-Appellant.

20-3061-cr

FOR APPELLEE: LARA POMERANTZ, Assistant United States Attorney (Maurene Comey, Alison Moe, and Karl Metzner, Assistant United States Attorneys, *on the brief*), *for* Audrey Strauss, Acting United States Attorney, Southern District of New York, New York, NY.

FOR DEFENDANT-APPELLANT: ADAM MUELLER (Ty Gee, *on the brief*), Haddon, Morgan and Foreman, P.C., Denver, CO.

Appeal from an order of the United States District Court for the Southern District of New York (Alison J. Nathan, *Judge*).

UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the motion to consolidate is **DENIED** and the appeal is **DISMISSED** for want of jurisdiction.

Defendant-Appellant Ghislaine Maxwell seeks interlocutory relief from a September 2, 2020 denial of her motion to modify a protective order entered on July 30, 2020. In the alternative, she argues that this Court should issue a writ of mandamus directing the District Court to modify the protective order. She also moves to consolidate the instant appeal with the appeal pending in *Giuffre v. Maxwell*, No. 20-2413. Meanwhile, the Government moves this Court to dismiss the appeal for lack of jurisdiction and opposes Maxwell's motion to consolidate on the grounds that the issues presented on appeal are both factually and legally distinct. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

This Court has jurisdiction over the "final decisions of the district courts." 28 U.S.C. § 1291. "Finality as a condition of review is an historic characteristic of federal appellate procedure." *Cobbledick v. United States*, 309 U.S. 323, 324 (1940). The "final judgment rule requires that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits." *Flanagan v. United States*, 465 U.S. 259, 263 (1984) (internal quotation marks omitted). "This insistence on finality and prohibition of piecemeal review discourage undue litigiousness and leaden-footed administration of justice, particularly damaging to the conduct of criminal cases." *Di Bella v. United States*, 369 U.S. 121, 124 (1962) (citing *Cobbledick*, 309 U.S. at 324–26). The final judgment rule is therefore "at its strongest in the field of criminal law." *United States v. Hollywood Motor Car Co.*, 458 U.S. 263, 265 (1982). In criminal cases, "finality generally is defined by a judgment of conviction and the imposition of a sentence." *Florida v. Thomas*, 532 U.S. 774, 777 (2001) (internal quotation marks omitted).

There is a "narrow" exception to the final judgment rule that permits appeals from "decisions that do not terminate the litigation, but must, in the interest of achieving a healthy legal system, nonetheless be treated as final." *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867–68 (1994) (internal quotation marks and citations omitted). The Supreme Court has described the "conditions for collateral order appeal as *stringent*" in general, *Digital Equip. Corp.*, 511 U.S. at 868 (emphasis added), and, with respect to criminal cases, it has "interpreted the collateral order exception with the *utmost strictness*." *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 799 (1989) (emphasis added) (internal quotation marks omitted). To fall within this limited category of appealable collateral orders, a decision must "(1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively

unreviewable on appeal from a final judgment." *United States v. Punn*, 737 F.3d 1, 5 (2d Cir. 2013) (internal quotation marks omitted).

Thus far, the Supreme Court has identified just four circumstances in criminal cases that come within this exception: motions to dismiss invoking double jeopardy, motions to reduce bail, motions to dismiss under the Speech or Debate Clause, and the forced administration of antipsychotic medication. *See Sell v. United States*, 539 U.S. 166 (2003) (holding that an order permitting the forced administration of antipsychotic medication is immediately appealable), *see also Midland Asphalt*, 489 U.S. at 799 (listing the recognized exceptions). Maxwell does not appeal from an order falling within one of these categories. Instead, she appeals from a denial of her motion to modify a protective order, which we have held does not fall within the collateral order exception. *See Mohawk Indus. v. Carpenter*, 558 U.S. 100, 107–08 (2009) (holding that pretrial discovery orders are not immediately appealable absent a showing that "delaying review until the entry of a final judgment would imperil a substantial public interest or some particular value of a high order" (internal quotation marks omitted)); *S.E.C. v. Rajaratnam*, 622 F.3d 159, 168 (2d Cir. 2010) (holding that the Court lacks jurisdiction to review interlocutory "discovery orders allegedly adverse to a claim of privilege or privacy"); *United States v. Caparros*, 800 F.2d 23, 26 (2d Cir. 1986) (holding that the Court lacks jurisdiction to review interlocutory protective orders governing "the right of a criminal defendant to disclose information given to [her] in discovery"). We decline to exercise jurisdiction where we have none, and accordingly dismiss this appeal for lack of jurisdiction.

In the alternative, Maxwell asks that this Court issue a writ of mandamus directing the District Court to modify the protective order. This Court will issue the writ as an exception to the finality rule "only in exceptional circumstances amounting to a judicial usurpation of power or a clear abuse of discretion." *In re City of New York*, 607 F.3d 923, 932 (2d Cir. 2010) (internal quotation marks omitted). "[M]ere error, even gross error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support issuance of the writ." *United States v. DiStefano*, 464 F.2d 845, 850 (2d Cir. 1972). Here, Maxwell failed to demonstrate that such exceptional circumstances exist and that the District Court usurped its power or abused its discretion. Accordingly, we decline to issue a writ modifying the protective order.

Finally, Maxwell also seeks to consolidate the instant appeal with the civil appeal pending in *Giuffre v. Maxwell*, No. 20-2413-cv. Because this Court lacks jurisdiction over Maxwell's appeal of the denial of her motion to modify her protective order, and because mandamus relief is not warranted, we deny as moot her motions to consolidate this appeal with the civil appeal. In any event, this Court has heard Maxwell's criminal appeal in tandem with her civil appeal. To secure the further relief of formal consolidation, Maxwell "bear[s] the burden of showing the commonality of factual and legal issues in different actions." *In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 373 (2d Cir. 1993). Here, the parties, Judges, and legal issues presented in these appeals lack common identity. The criminal appeal concerns a denial of Maxwell's motion to modify a protective order while the civil

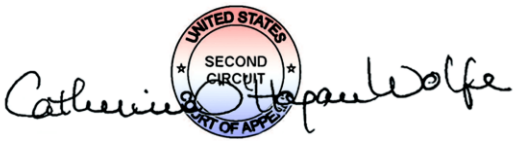
appeal concerns an unsealing order. Further, as the District Court correctly noted, Maxwell "provide[s] no coherent explanation" connecting the discovery materials at issue in the criminal case to the civil litigation.

CONCLUSION

We have reviewed all of the arguments raised by Defendant-Appellant Maxwell on appeal and find them to be without merit. For the foregoing reasons, the appeal is **DISMISSED** and the motion to consolidate is **DENIED** as moot.

Any appeal in this criminal case shall be referred to another panel in the ordinary course.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



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: October 19, 2020
Docket #: 20-3061cr
Short Title: United States of America v. Maxwell

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

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:
* be filed within 14 days after the entry of judgment;
* be verified;
* be served on all adversaries;
* not include charges for postage, delivery, service, overtime and the filers edits;
* identify the number of copies which comprise the printer's unit;
* include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
* state only the number of necessary copies inserted in enclosed form;
* state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
* be filed via CM/ECF or if counsel is exempted with the original and two copies.

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

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Date: October 19, 2020
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DC Docket #: 1:20-cr-330-1
DC Court: SDNY (NEW YORK CITY)
DC Judge: Nathan

VERIFIED ITEMIZED BILL OF COSTS

Counsel for
_____

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the
_____

and in favor of
_____

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____ ____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

_____
Signature

20-3061
United States v. Maxwell

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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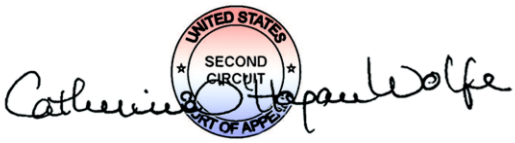
FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



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CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: October 19, 2020
Docket #: 20-3061cr
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 CASE MANAGER CHANGE

The case manager assigned to this matter has been changed.

Inquiries regarding this case may be directed to 212-857-8541.

20-3061
United States v. Maxwell

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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v.

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Defendant-Appellant.

20-3061-cr

FOR APPELLEE: LARA POMERANTZ, Assistant United States Attorney (Maurene Comey, Alison Moe, and Karl Metzner, Assistant United States Attorneys, *on the brief*), *for* Audrey Strauss, Acting United States Attorney, Southern District of New York, New York, NY.

FOR DEFENDANT-APPELLANT: ADAM MUELLER (Ty Gee, *on the brief*), Haddon, Morgan and Foreman, P.C., Denver, CO.

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This Court has jurisdiction over the "final decisions of the district courts." 28 U.S.C. § 1291. "Finality as a condition of review is an historic characteristic of federal appellate procedure." *Cobbledick v. United States*, 309 U.S. 323, 324 (1940). The "final judgment rule requires that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits." *Flanagan v. United States*, 465 U.S. 259, 263 (1984) (internal quotation marks omitted). "This insistence on finality and prohibition of piecemeal review discourage undue litigiousness and leaden-footed administration of justice, particularly damaging to the conduct of criminal cases." *Di Bella v. United States*, 369 U.S. 121, 124 (1962) (citing *Cobbledick*, 309 U.S. at 324–26). The final judgment rule is therefore "at its strongest in the field of criminal law." *United States v. Hollywood Motor Car Co.*, 458 U.S. 263, 265 (1982). In criminal cases, "finality generally is defined by a judgment of conviction and the imposition of a sentence." *Florida v. Thomas*, 532 U.S. 774, 777 (2001) (internal quotation marks omitted).

There is a "narrow" exception to the final judgment rule that permits appeals from "decisions that do not terminate the litigation, but must, in the interest of achieving a healthy legal system, nonetheless be treated as final." *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867–68 (1994) (internal quotation marks and citations omitted). The Supreme Court has described the "conditions for collateral order appeal as *stringent*" in general, *Digital Equip. Corp.*, 511 U.S. at 868 (emphasis added), and, with respect to criminal cases, it has "interpreted the collateral order exception with the *utmost strictness*." *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 799 (1989) (emphasis added) (internal quotation marks omitted). To fall within this limited category of appealable collateral orders, a decision must "(1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively

unreviewable on appeal from a final judgment." *United States v. Punn*, 737 F.3d 1, 5 (2d Cir. 2013) (internal quotation marks omitted).

Thus far, the Supreme Court has identified just four circumstances in criminal cases that come within this exception: motions to dismiss invoking double jeopardy, motions to reduce bail, motions to dismiss under the Speech or Debate Clause, and the forced administration of antipsychotic medication. *See Sell v. United States*, 539 U.S. 166 (2003) (holding that an order permitting the forced administration of antipsychotic medication is immediately appealable), *see also Midland Asphalt*, 489 U.S. at 799 (listing the recognized exceptions). Maxwell does not appeal from an order falling within one of these categories. Instead, she appeals from a denial of her motion to modify a protective order, which we have held does not fall within the collateral order exception. *See Mohawk Indus. v. Carpenter*, 558 U.S. 100, 107–08 (2009) (holding that pretrial discovery orders are not immediately appealable absent a showing that "delaying review until the entry of a final judgment would imperil a substantial public interest or some particular value of a high order" (internal quotation marks omitted)); *S.E.C. v. Rajaratnam*, 622 F.3d 159, 168 (2d Cir. 2010) (holding that the Court lacks jurisdiction to review interlocutory "discovery orders allegedly adverse to a claim of privilege or privacy"); *United States v. Caparros*, 800 F.2d 23, 26 (2d Cir. 1986) (holding that the Court lacks jurisdiction to review interlocutory protective orders governing "the right of a criminal defendant to disclose information given to [her] in discovery"). We decline to exercise jurisdiction where we have none, and accordingly dismiss this appeal for lack of jurisdiction.

In the alternative, Maxwell asks that this Court issue a writ of mandamus directing the District Court to modify the protective order. This Court will issue the writ as an exception to the finality rule "only in exceptional circumstances amounting to a judicial usurpation of power or a clear abuse of discretion." *In re City of New York*, 607 F.3d 923, 932 (2d Cir. 2010) (internal quotation marks omitted). "[M]ere error, even gross error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support issuance of the writ." *United States v. DiStefano*, 464 F.2d 845, 850 (2d Cir. 1972). Here, Maxwell failed to demonstrate that such exceptional circumstances exist and that the District Court usurped its power or abused its discretion. Accordingly, we decline to issue a writ modifying the protective order.

Finally, Maxwell also seeks to consolidate the instant appeal with the civil appeal pending in *Giuffre v. Maxwell*, No. 20-2413-cv. Because this Court lacks jurisdiction over Maxwell's appeal of the denial of her motion to modify her protective order, and because mandamus relief is not warranted, we deny as moot her motions to consolidate this appeal with the civil appeal. In any event, this Court has heard Maxwell's criminal appeal in tandem with her civil appeal. To secure the further relief of formal consolidation, Maxwell "bear[s] the burden of showing the commonality of factual and legal issues in different actions." *In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 373 (2d Cir. 1993). Here, the parties, Judges, and legal issues presented in these appeals lack common identity. The criminal appeal concerns a denial of Maxwell's motion to modify a protective order while the civil

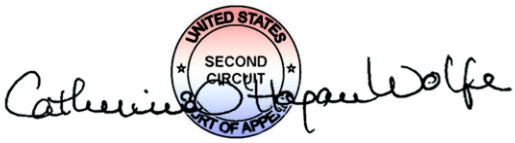
appeal concerns an unsealing order. Further, as the District Court correctly noted, Maxwell "provide[s] no coherent explanation" connecting the discovery materials at issue in the criminal case to the civil litigation.

CONCLUSION

We have reviewed all of the arguments raised by Defendant-Appellant Maxwell on appeal and find them to be without merit. For the foregoing reasons, the appeal is **DISMISSED** and the motion to consolidate is **DENIED** as moot.

Any appeal in this criminal case shall be referred to another panel in the ordinary course.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit