

From: "████████ (USANYS)" <████████>
To: "████████ (USANYS)" <████████>, "████████ (USANYS)"
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Subject: RE: Disparities in Counsel and Discovery Access for Ghislaine Maxwell and Justin Rivera

Date: Mon, 21 Dec 2020 22:54:45 +0000

Absolutely – we'll send around another update as soon as we know the substance of our response.

From: █████ (USANYS) <████████>
Sent: Monday, December 21, 2020 4:42 PM
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Thanks, █████. Can you keep me posted on what we think will be the substance of the draft declaration when you know (that is, before we are submitting anything on 12/31)? And how much of this is attributable to differences between MCC and MDC, as well as specific differences in their housing situations?

From: █████, █████ (USANYS) <████████>
Sent: Monday, December 21, 2020 4:35 PM
To: █████ (USANYS) <████████>; █████ (USANYS) <████████>; █████
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Subject: Disparities in Counsel and Discovery Access for Ghislaine Maxwell and Justin Rivera

All:

I wanted to bring to your attention a recent issue that's surfaced in *United States v. Rivera et al.*, a sex trafficking case pending before Judge Engelmayer. As I'll describe in more detail below, Judge Engelmayer has asked us to submit a declaration from the BOP explaining why the discovery and counsel access accommodations provided to Ghislaine Maxwell (detained at the MDC outside the general population) cannot be extended to Justin Rivera (detained at the MCC in the general population).

Justin Rivera was charged in February 2019 with sex trafficking conspiracy. He's been detained at the MCC since April 2019 on consent (he's also serving a state sentence). His trial, which was originally scheduled for April 2019, is expected to start on February 16, 2020. In July 2020, he had new counsel appointed, citing an irreconcilable breakdown with his former counsel.

Since this fall, Judge Engelmayer has become increasingly frustrated with the MCC's treatment of Rivera. In particular, he's cited their failure to provide Rivera with adequate accommodations to review discovery and meet with his lawyers, who refuse to visit Rivera at the MCC for personal health concerns. We have two court orders in place to address these issues: (1) a laptop order, which requires the MCC to provide Rivera access to a laptop for three hours per day; and (2) a videoconference order, which requires the MCC to make available four hours of videoconferencing each week, in addition to any telephone or videoconference calls obtained through the Federal Defenders.

At the moment, there's not a concern, at least from Judge Engelmayer, that the amount of time Rivera has for videoconferences and electronic discovery review is insufficient for trial preparation, although defense counsel has stated that they may request more time in the future. However, in a letter last night and during a court conference this morning (transcript attached), defense counsel cited the accommodations that the MDC has provided to Maxwell, describing them as "strikingly different and far superior" to those afforded to Rivera. Defense counsel further suggested that Rivera was being treated differently on account of his race, gender and class. Judge Engelmayer stated that the disparity in access "jumped off the page" and that the optics were "terrible," and asked us to explain the rationale for the differing treatment. After conferring with [REDACTED] and [REDACTED] before our conference, we explained our understanding that the disparity comes down to the fact that Maxwell and Rivera have very different housing situations, with Maxwell's situation being more amenable to greater access to electronic discovery review and legal visits.

Judge Engelmayer asked us to submit a declaration, from an appropriate person at the BOP, explaining in more detail why the accommodations provided to Maxwell cannot be extended to Rivera.

Based on the recent bail opposition in the *Maxwell* case, I believe the differences in counsel/discovery access are as follows:

Accommodation	Maxwell	Rivera
Review of electronic discovery (NB: each defendant has laptop access)	13 hours per day/7 days per week (91 hours total)	3 hours per day/7 days per week (21 hours total)
Counsel visits (by video)	3 hours per day/5 days per week (15 hours total)	Four hours per week (plus an additional two hours scheduled through the Federal Defenders) (6 hours total)
Weekend legal calls	As needed	Not available

The declaration is due by December 31. Because Judge Engelmayer's request implicates at least two criminal cases, and potentially the ongoing civil litigation with the MCC, we wanted to make sure that you were all aware of this issue. We are also happy to set up a call to discuss this further. In the meantime, we are working with [REDACTED] to identify the appropriate declarant and draft an explanation for the Court.

Best,

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